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Planning and Economic Development

Hertsmere Borough Council Statement of Case - APP/N1920/W/23/3320599

July 2023

LPA reference: 22/1539/OUT

Appeal by: Fairfax Acquisitions Ltd

Site Address: Land South of Shenley Hill, Radlett, WD7 7BD

Proposal:

Erection of up to 195 new homes (45% affordable), safeguarded land for the expansion of Newberries Primary School and provision of a new medical centre, along with associated access. Outline application to include the matter of ACCESS (with the following matters reserved: Appearance, Landscaping, Layout and Scale).

Contents

| | | |
|-----|---|-----------|
| 1.0 | Introduction, Qualifications and Experience..... | 3 |
| 2.0 | Policy Context..... | 4 |
| | The Development Plan..... | 4 |
| | Other Material Considerations | 5 |
| 3.0 | The Green Belt | 6 |
| | Introduction | 6 |
| | Harm by reason of Inappropriateness: Definitional Harm | 6 |
| | Harm to openness..... | 7 |
| | Other Harm: Green Belt Purposes..... | 9 |
| | Other Harm: Landscape Impacts | 10 |
| | Very Special Circumstances | 11 |
| 4.0 | Planning Balance and Conclusion..... | 17 |
| 5.0 | Summary | 22 |

1.0 Introduction, Qualifications and Experience

- 1.1 I hold a Masters degree in Town Planning from London South Bank University (LSBU) following completion of my studies in December 2022. I am preparing to submit for licentiate membership of the RTPI as part of my degree apprenticeship with Hertsmere Borough Council (HBC) and LSBU.
- 1.2 I am currently employed by HBC as a Senior Planner in Development Management. I have held this position since July 2023. Prior to this I was employed as a Planning Officer at HBC, though carrying out the duties of a Senior Planner in an acting up role since September 2021. I have worked as a Planner for a total of three years and ten months.
- 1.3 My evidence is provided in support of the Local Planning Authority (LPA's) decision to refuse Outline planning permission for three reasons; however, my evidence focuses on the first of those reasons, namely:

Per paragraph 11 of the National Planning Policy Framework (2021) the presumption in favour of sustainable development applies. Planning permission should therefore be granted, unless the application of policies within the NPPF that protect areas or assets of particular importance (which includes land designated as Green Belt) provides a clear reason for refusal

The proposed development is considered to be inappropriate development in the Green Belt, given that it would fail to comply with any of the defined exceptions at paragraphs 149 and 150 of the NPPF. A case for Very Special Circumstances has been made by the applicant, outlining a number of benefits of the scheme. However, officers consider that these benefits when taken together are insufficient to outweigh the harm to the Green Belt, by reason of inappropriateness and due to the significant harm to openness that would arise. Accordingly, Very Special Circumstances do not arise here.

Therefore the proposed development is considered to be contrary to the NPPF (2021), Policies SP1, SP2, and CS13 of the Hertsmere Local Plan Core Strategy (2013) and Policy SADM26 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan (2016)

- 1.4 This Proof of Evidence pertains to Green Belt and planning balance matters and should be read in conjunction with the LPA's Planning Statement of Case (CD7.2), as well as the separate evidence of Mr. Radmall. It sets out the relevant policies and material considerations that are most pertinent to this appeal and assesses the appeal scheme against these. A planning balance exercise is undertaken in accordance with Section 70(2) of the Town and Country Planning Act 1990 (as amended).
- 1.5 Where relevant, this Proof will draw upon matters of landscape, including character and appearance, from the evidence of Mr. Radmall. When commenting on these matters, specific reference will be made to the respective Proofs and Statements of Common Ground. I adopt their conclusions and rely upon them for my own evidence, where relevant.
- 1.6 At the time of writing, the second reason for refusal had been resolved and so I make no reference to it here. The third reason for refusal, concerning flooding, is being considered by the Lead Local Flood Authority and the Statement of Common Ground notes that it is hoped that the issue can be resolved before the inquiry. I do not refer to it in my evidence but reserve the right to comment further should the matter not be resolved.

2.0 Policy Context

The Development Plan

- 2.1 The policies relevant to this appeal are set out within the LPA's Statement of Case (CD7.2). For the avoidance of doubt, the development plan for Hertsmere comprises the following documents:
- Hertsmere Core Strategy (2013)
 - Site Allocations and Development Management Policies Plan (2016)
 - Radlett Neighbourhood Plan (2021)
- 2.2 The policies considered by the Council to be of most relevance to the appeal are:

Core Strategy

- SP1 Creating sustainable development
- SP2 Presumption in favour of sustainable development
- CS1 The supply of new homes
- CS4 Affordable housing
- CS7 Housing Mix
- CS13 The Green Belt

Site Allocations and Development Management Policies Plan

- SADM22 Green Belt Boundary
- SADM26 Development Standards in the Green Belt
- SADM40 Highway Access Criteria for New Developments

Radlett Neighbourhood Plan

- Policy HD3 Respecting And Enhancing Local Townscape And Landscape Character And Patterns
- Policy HD5 Healthy High Quality Trees And Hedges
- Policy RV2 Medical Facilities
- Policy GA1 Walking and Cycling Networks

Other Material Considerations

2.3 The National Planning Policy Framework 2021 is a key material consideration to this appeal, with particular regard to paragraph 11 (relating to sustainable development) and Chapter 13 (relating to Green Belt).

2.4 As has been set out in the Council's Statement of Case, the Council's now set-aside draft Regulation 18 Local Plan (2021) is not considered to carry any weight in the assessment of the appeal scheme. This is addressed further within the Planning Balance section of this Proof. However, the evidence base for the Local Plan is agreed to be a material consideration.

3.0 The Green Belt

Introduction

- 3.1 The key policy within the Development Plan is Policy CS13 of the Core Strategy. This policy states that “*there is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist*”. (CD3.7, p60). This mirrors national policy on the Green Belt, as set out within the NPPF. Whether the proposals conflict with this policy turns on whether very special circumstances exist, which I address later. It is my view that they do not arise here, and on that basis, the proposed development conflicts with this policy and with the development plan read as a whole, as well as with national policy in the NPPF.
- 3.2 Chapter 13 of the NPPF is relevant. Per paragraph 137, the Government attaches great importance to Green Belts, and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. These proposals conflict with that policy aim: they do the opposite of keeping this piece of Green Belt land open.
- 3.3 The five purposes of the Green Belt are set out at paragraph 138 of the NPPF. Of particular relevance of this appeal is: c) to assist in safeguarding the countryside from encroachment. Mr Radmall addresses the proposals in the context of the five purposes in his evidence and I adopt that analysis for my own evidence.

Harm by reason of Inappropriateness: Definitional Harm

- 3.4 It is accepted between the Council and the appellant that the appeal scheme constitutes inappropriate development in the Green Belt. Paragraph 147 of the NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the NPPF requires that substantial weight be given to any harm to the Green Belt. Furthermore, ‘very special circumstances’ will not exist unless the potential harm to

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

- 3.5 The appeal scheme is therefore by definition harmful to the Green Belt, which carries substantial weight. This is the starting point for determining the harm to the Green Belt arising from the appeal scheme. Any other harm to the Green Belt identified will contribute additional weight, and to that must also be added 'any other harm', which I turn to later in this Proof.

Harm to openness

- 3.6 Whilst there is no definition of openness provided either within the NPPF or the NPPG, it is broadly accepted that 'openness' is a concept which includes (or can include) both spatial and visual elements, and that it refers to an absence of built development, including two-dimensional development such as hard standing.
- 3.7 The appeal site comprises a parcel of previously undeveloped (or greenfield) land adjacent to the settlement of Radlett. There is no existing built-form within the site, and the site comprises vacant open pasture land. The site's topography includes a sloping gradient away from Shenley Hill, to the north, towards the southern boundary adjacent to Theobald Street, such that the site's openness within the context of the surrounding countryside can be appreciated from Shenley Hill. Mr. Radmall considers the viewpoints from which the openness of the appeal site can be seen and appreciated and I understand there to be no significant debate about the range of those viewpoints.

Openness: Spatial Impact

- 3.8 The spatial impact of the scheme arises from the introduction of up to 195 dwellings, of up to 3 storeys in height in some locations, together with internal road infrastructure, car parking, landscaping, boundary treatments and other residential paraphernalia. The scheme also includes the provision of a new medical centre on the site of a height of 2 storeys. This would introduce a substantial amount of footprint and volume of built form on a site that would otherwise be devoid of development. The effect of this built form, taken as a whole, would be to significantly erode the spatial openness of the site. In effect it will be lost.
- 3.9 Accordingly there would be a significant spatial impact arising from the proposed development, which would result in harm to the openness of the Green Belt.

Openness: Visual Impact

- 3.10 The site's openness is appreciable from a number of both localised and longer-ranging views. Of particular note are views across the site from Shenley Hill and public footpath 55 which both run along the north of the site, views from residential areas and dwellings towards the site from the north and west of the site, as well as views from Theobald Street to the south of the site, looking northwards.
- 3.11 A Landscape and Visual Impact Assessment (LVIA) was submitted at application stage (CD1.4). Mr Radmall addresses the conclusions of the LVIA and surmises that the conclusions from the LVIA accurately describe the visual influence of the site. Mr Radmall explains his consideration of the viewpoints from which the site would be most appreciated and I adopt his evidence.
- 3.12 The Appellant argues that owing to the visual containment of the site, the overall harm to the Green Belt in terms of openness would be limited. The appeal site is visually contained by the woodland to the east of the site, and the residential settlement to the west of the site. It is my opinion that while the site is visually contained from the east and west, the visibility of the site has not been properly considered by the Appellant.
- 3.13. I agree with Mr Radmall's consideration of the relevant views as outlined within the LVIA, that the visual impact of the appeal scheme on Green Belt openness would be appreciable from views along Shenley Road, Theobald Street, residential areas within the settlement of Radlett (including along Williams Way, Newberries Avenue and Shenley Road), as well as further afield, such as the Radlett Rugby Club to the south of the site. This visual impact could potentially be suitably mitigated by landscape screening or planting in some locations. However other viewpoints are essentially incapable of mitigation owing to the proximity of the development and the magnitude of the change in landscape. In some locations, the visual implications would in fact be exacerbated, such as along Shenley Hill, where the new access to the site would allow for wider views into the site.
- 3.14 For a detailed assessment of the proposed development's visual impact, I would refer the Inspector to the Council's Landscape Proof prepared by Mr. Radmall. Whilst Green Belt and landscape are separate planning matters, there is crossover where the visual impact on Green Belt openness is concerned; hence, assessments of visual impact on Green Belt openness often rely on LVIA. Mr. Radmall's Proof evidences that the site meets the test of Green Belt openness and is spatially open.

- 3.15 The effect of the proposed development in reducing the openness of the appeal site would be visible and appreciable from a range of viewpoints, which adds to the overall harm.

Other Harm: Green Belt Purposes

- 3.16 In addition to the definitional harm arising from the proposed development, and the visible loss of openness, the development would conflict with the purposes of including land in the Green Belt. Mr. Radmall addresses this issue in his proof and I adopt his conclusions.
- 3.17 I concur with Mr Radmall's conclusions with regards to the purposes of including land in the Green Belt and his assessment that the appellant's Green Belt review downplays the contribution of the appeal site to the purposes of the Green Belt. I agree that with respect to Purpose (a), Radlett can be considered a 'large built-up area' and that the designation of the Green Belt on the surrounding adjoining land has contributed to this land not being developed and therefore this site particularly would have a 'moderate' contribution to the purposes of the Green Belt. I also concur with his opinion (at para. 7.16) that this contribution would be undermined by the proposals.
- 3.18 I agree that with respect to purpose (b), while the appellant has afforded the site no contribution to these purposes, Mr Radmall's conclusion suggests otherwise. I agree with Mr Radmall's assessment that owing to the nature of the site along a main road connecting Radlett and the neighbouring settlement of Shenley, *'The currently undeveloped condition of the site therefore helps to maintain a perception of separation between the settlements, which I would regard as a Weak contribution'* (para. 6.10). I also agree that the site forms a small but not insignificant proportion of the gap between Radlett and the neighbouring settlement of Borehamwood along Theobald Street, a main connecting road between the settlements, and that this results in a moderate contribution to purpose (b). Again, I adopt his conclusion (at 7.17-7.18 of his Proof) that this contribution would be undermined by the proposals.
- 3.19 With respect to purpose (d), I agree that Radlett should be considered a 'historic' town and while the site is not highly visible from Radlett North Conservation Area, any development would be visible within Radlett South Conservation area, and therefore the appeal site contributes weakly to this purpose. That said, I accept Mr Radmall's conclusion (at 7.20) that the proposals would not affect this contribution.

- 3.20 The development would directly undermine purpose (c) of the Green Belt as outlined by Mr Radmall, and I agree with his conclusions that the site forms part of the countryside in its character and spatial relationship with the Green Belt and retains a sense of place reflecting its pastoral and open appearance. In my opinion, since purpose (c) directly relates to the retention and preservation of countryside character, this site would contribute relatively strongly to this purpose, and would be directly undermined by the proposals.
- 3.21 Taking all of this together, and noting that national policy requires no less than substantial weight to be given to any harm to the Green Belt, in my view this is a case in which the harm caused is well above the minimum, or lowest end of the scale. The spatial reduction in openness is significant, and can be observed from a number of viewpoints. The proposals also conflict with at least one identified 'purpose' for including land in the Green Belt, and on the Council's case, another two of those purposes, albeit not as significantly. While I do not consider that, overall, the harm requires very substantial weight to be afforded to it, it remains worthy of substantial weight, and considerably more than the minimum level within that category.

Other Harm: Landscape Impacts

- 3.22 Landscape harm is addressed separately by the Council's Landscape witness, Mr. Radmall. His evidence provides a full assessment, the conclusions of which I adopt and rely upon in my own evidence. I agree with his conclusion that the Appellant's downplaying of the site's sensitivity is unsubstantiated and that the development would result in the transformation of the role of the majority of the site from being part of the countryside to part of the extended settlement with the loss of the grassland interior of the site and the acquisition of a suburban and enclosed character, replacing the current open and greenfield appearance.
- 3.23 Accordingly, in addition to the harm to the Green Belt, the Council considers that the development would result in harm to the character and appearance of the landscape in conflict with the NPPF, Policy CS12 of the Core Strategy (CD3.1), and Policy SADM26 of the Site Allocations and Development Management Policies Plan (CD3.2). This additional, and separate, measure of harm carries significant weight.

Very Special Circumstances

- 3.24 As set out previously, the proposed development is inappropriate development which is harmful by definition and should not be approved except in very special circumstances, per the requirements of NPPF paragraph 147. Paragraph 148 of the NPPF stipulates that in order for very special circumstances to exist, the potential harm to the Green Belt together with any other harm must be clearly outweighed by other considerations.
- 3.25 The proposed development would result in definitional harm to the Green Belt, a reduction in Green Belt openness (both spatial and visual) and conflict with Green Belt purposes. Per the requirements of NPPF paragraph 148, these harms are afforded substantial weight. In terms of other harms, this is limited to landscape character and appearance (harm which I give significant weight). It must thus be determined whether the benefits of the scheme would clearly outweigh these harms, taken together.
- 3.26 A breakdown of the suggested benefits of the appeal scheme, and the weight the Council attributes to these, are set out in the Council's Statement of Case (CD7.2, paras. 4.24-4.50). Further justification for these are now provided.

Housing Related Benefits

- 3.27 The chief benefit of the scheme is agreed to be the delivery of housing (market/general, and affordable) in the absence of a five year housing land supply. The Council calculates the housing land supply to be 2.25 years, as set out within the Five Year Housing Land Supply 2021/22 (September 2022) (CD4.11). This calculation is not contested, as evidenced in the Statement of Common Ground between the Council and the appellant (CD7.4).
- 3.28 The appeal scheme would contribute up to 195 dwellings towards the borough's housing stock. Of these, 45% would be affordable homes and the Council are satisfied that the affordable housing proposed would exceed the requirements of Policy CS4 of the Core Strategy.
- 3.29 Though the Council does not have a five year housing land supply, it has delivered more than 75% of its housing in the last three years. Despite this, the Council agree that the shortfall of housing is significant and the contribution made by the proposals

would in that sense be welcome and helpful. This has informed the weight I attach to this benefit in the planning balance.

- 3.30 I refer to a recent appeal in the neighbouring authority of St. Albans (appeal ref. APP/B1930/W/20/3260479, CDJ.17). The development proposed up to 100 homes in the Green Belt, with part of the site being brownfield land. In this case the authority had a housing land supply of 2.4 years as well as a very out of date local plan. Efforts to produce a new Local Plan had not been successful, with two emerging plans found to be unsound. Furthermore, as with Hertsmere, almost all the undeveloped land in the district outside of the built-up areas fell within the Metropolitan Green Belt. The Inspector determined that for the proposed number of units, and noting that the NPPF seeks to significantly boost the supply of housing land, significant weight should be afforded to the contribution of up to 100 units towards housing land supply.
- 3.31 Hertsmere has a broadly similar housing land supply position and furthermore the draft (Regulation 18) Local Plan for the borough has been set-aside, thus carrying no weight in the determination of planning applications (despite the underlying evidence base remaining material), with the adopted local plan long out of date. I do recognise that the current appeal scheme proposed more dwellings than the case mentioned above, with the provision of up to 195 dwellings. In addition to the above I refer to the recent appeal decision at Little Bushey Lane, Bushey (APP/N1920/W/23/3314268) which proposed 310 dwellings, including affordable and self-build dwellings. A disagreement was found between the appellant and Hertsmere Borough Council as to the lack of housing land supply, although the Inspector found that with either number, the housing land supply within Hertsmere was very limited. The Inspector determined that for the proposed number of units, and noting that the NPPF seeks to boost the supply of housing land, very substantial weight should be afforded to the contribution of up to 310 units towards the housing land supply.
- 3.32 In my view, the provision of 195 dwellings in this case would be significantly lower than that of the aforementioned appeal decision, and therefore the weighting of this benefit must be considered accordingly. Additionally, one must consider the provision of housing in comparison to the overall shortfall of housing in the borough, and while the provision of housing would be generally welcome, it is not the case that 195 dwellings would make any substantial impact on the overall housing supply in Hertsmere. With the above considered, I would argue that the provision of market housing would attract *significant weight* in the planning balance here.

- 3.33 With respect to Affordable Housing, the appellant proposes to provide 45% of the total number of dwellings as affordable (up to 88 dwellings). In the context of the Council's HLS position, and the clear identified need for affordable homes in the borough, this is a noted benefit of the scheme that would contribute positively to the case for VSCs. The appellant notes that the provision of affordable homes in the last decade within the borough is equivalent to the annual requirement for affordable housing, indicating a significant shortfall. I would argue again, that while the provision of up to 88 affordable homes is obviously a benefit of the scheme, it will not make a substantial contribution to the affordable housing need within the borough to any great extent. In light of this I would afford the provision of affordable housing *significant weight* in the planning balance.

School Expansion Land

- 3.34 The appeal scheme would include the provision of 0.7ha of safeguarded land for the future expansion of Newberries Primary School, immediately adjacent to the site along the west boundary.
- 3.35 A representation was made by the Hertfordshire County Council Growth and Infrastructure Unit as the Local Education Authority. Within this representation, the Planning Officer (HCCPO) outlines the background to this particular site and its relationship with Newberries Primary School, including that the expansion of the school from a 1FE to a 2FE was envisaged within the Draft Local Plan (Reg 18) 2021, with the provision of the land from the appeal site providing additional space for sports pitches and fields for the expansion of the school.
- 3.36 The Draft Local Plan has now been shelved and therefore any planned expansion of Newberries Primary School to address additional education provision holds no weight in policy. Any future expansion of Newberries School would be considered by the Local Education Authority aside from any Local Plan or within a Local Plan in the future. There is no evidence to suggest that the provision of additional education provision will be provided at Newberries School in the near future, or at all if other sites are chosen in the future for school provision or expansion.
- 3.37 The HHCPO therefore considers the impact on local education provision by the proposed appeal scheme, and outlines that as the site is within the Radlett Primary School Planning area, it is extremely likely that pupils living in this site would be able to access places at Newberries School. Therefore, it is considered necessary to implement an obligation, in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2020, for the appellant to provide this additional land

for the purposes of future expansion at the school. This will be the only contribution to education that will be made for the scheme, as no monetary contribution has been requested by Hertfordshire County Council.

- 3.38 In my opinion, the HCCPO has outlined with clarity that the provision of the land for the school expansion is an obligation of the appeal scheme. Its primary function is to mitigate the impacts of the proposed development. At the same time, I consider that the provision of any land for the expansion of a local school and for the purposes of enhancing education provision is in of itself a benefit to the borough and settlement of Radlett, albeit its primary function is to mitigate the effects of the proposals. With these two points considered, it is my opinion that the provision of land for the school should carry only *very limited weight* as a benefit in the planning balance.

Provision of a Medical Facility

- 3.39 The Council's Statement of Case (CD7.2) outlines the background to the consideration of the weight in the planning balance with respect to the proposed provision of a new medical facility within the appeal scheme. The medical facility would provide a new facility for the existing Red House Surgery practice which currently exists along Watling Street, within the Radlett High Street.
- 3.40 In summary, I consider that evidence has been provided in the Infrastructure Delivery Plan Part 1 Report 2021 (CD4.29) that although the Red House Surgery currently has 1,817 patients registered per doctor, which is above the ideal standard, and there is a physical capacity shortfall of 21,381 patients across the borough, that there are sufficient numbers of GPs and practices to serve the existing population. I also consider that limited information has been provided either within the evidence base for the Draft Local Plan or by the appellant, that the new medical facility will address any shortfall of medical provision. By this, I mean that no evidence has been provided to indicate whether additional GP coverage will be achieved by the relocation of the Red House Surgery, and responses from the Red House Surgery itself and the NHS have not indicated a clarified need for a new medical facility in any urgent capacity. I note that the Appellant proposes to call a witness on this point, and so I must reserve my right to comment on that evidence once it has been received.
- 3.41 In addition to the limited evidence of need provided by the appellant, I also consider policy from the Radlett Neighbourhood Plan, in particular Policy RV2 which outlines: *'The retention or enhancement of the range of medical services in Radlett will be supported. Any such use should be located in the Village Centre unless it can be demonstrated that there are no viable and deliverable sites, in which case provision*

elsewhere in the settlement will be supported.'. As outlined in the Council Statement of Case, the proposed site for the medical facility would not comply with this policy as it would not be located within the existing settlement or within the village centre. At present, there is no evidence that a medical facility could not be provided within a location deemed appropriate within the Radlett Neighbourhood Plan policy.

- 3.42 Owing to the lack of evidence and non-compliance with the Radlett Neighbourhood Plan, I would argue that while this aspect of a benefit of the scheme, it should attract *very limited weight* in the planning balance.

Radlett Plantation RIGS Enhancement

- 3.43 As outlined in the LPA's Statement of Case (CD7.2), the long-term management and accessibility of the Puddingstone present adjacent to the site would attract only *very limited weight* in the planning balance. I retain that the Puddingstone holds value only for those studying and inspecting the site, with little to no value for the public, and that the management and increased accessibility to the geological feature could be achieved without the appeal scheme.

Biodiversity

- 3.44 The provision of a 10% net gain of biodiversity on the site is argued by the appellant to carry *moderate weight* in the planning balance. However, I disagree with this weighting.
- 3.45 The LPA's Draft Biodiversity Net Gain SPD (2022) outlines that with sites above a certain threshold '*Not only should development proposals in Hertsmere maintain and protect biodiversity, they will be expected to result in a measurable net gain in biodiversity of at least 10%.*' (CD3.10, p.25). Additionally, Paragraph 74 of the NPPF outlines that new development is expected to bring about BNG, therefore I do consider that the provision of BNG must be considered a necessity for the appeal scheme, rather than an additional benefit. Furthermore, in appeal decision (APP/B1930/W/21/3279463), a provision of over 137% BNG for habitats and over 7600% for hedgerows was afforded only moderate weight by the Inspector (CDJ.18, para. 75).
- 3.46 In light of the above, I consider the provision of a 10% increase to biodiversity to attract only *limited weight* in the planning balance

Economic and Social Benefits

- 3.47 As mentioned in the LPA's Statement of Case (CD7.2), limited to no evidence has been provided to quantify the Appellant's argument that the appeal scheme will result in economic and social benefits, including construction jobs, increased spending in the area and provision of open spaces. It is my opinion that even with evidence of the economic factors (which I accept are likely to exist, albeit not easy to quantify), the increased constructions jobs would be a temporary benefit and the increased spending in the surrounding area is not a site specific benefit, as this would arise from any development. Additionally, I outline again that no evidence has been provided with regards to any lack of open space facilities in Radlett, and in fact on the contrary, the settlement has at least 2 public parks and many miles of surrounding footpaths and bridleways in the surrounding area. I therefore consider this benefit would attract only *limited weight* in the planning balance.

Sustainability and Environmental Benefits

- 3.48 The appellant makes the argument that the appeal scheme will result in sustainability and environmental benefits for the surrounding area including the construction of high energy efficiency housing, incorporating sustainable energy sources and delivery of off-site enhancements to the pedestrian network and public transport for sustainable travel.
- 3.49 There has been no evidence provided to the LPA regarding details of the sustainability measures to be implemented within the construction or operation of the housing and therefore very little can be said on this matter. However, it is reiterated from the LPA's Statement of Case (CD7.2), that following the publication of the HBC Interim Position Statement on Sustainability and Climate Change (CD3.11), many of the benefits highlighted by the appellant are an expectation of any new development.
- 3.50 Additionally, with respect to the increase in sustainable travel, this is also highlighted by the aforementioned policy as an expectation of new development, and therefore should not be considered as an additional benefit. Despite the scheme being at only Outline stage, the Hertfordshire County Council Highways Officer did highlight some concerns with regards to internal manoeuvrability and cycle storage on the site, issues which I consider to be unresolved under this appeal, although do not form a reason for refusal at this stage as the access to the site was the only matter to be

considered under the original application for the site. This being considered, with the outstanding concerns and limited information provided, there is insufficient evidence of appropriate sustainable transport measures to give this any significant weight as a benefit of the scheme. I do not consider it to be a benefit.

3.51 As set out within this Proof, the appeal scheme would result in harm to its environment both in terms of the impact upon the Green Belt and its purposes, in addition to harm to landscape character and appearance. As aforementioned, the site currently has an existing intrinsic character of open countryside which would be lost should the development go ahead, which could not be considered a benefit if it is agreed that this loss of character would be harmful. I do not consider there to be any net environmental benefits in this case. Overall, the scheme will be harmful in environmental terms.

3.52 Therefore I do not consider the sustainability and environmental factors to be considered as 'benefits' and I have given them no weight in the planning balance.

Conclusion

3.53 The Council acknowledges that there are benefits to the appeal scheme, particularly the contribution towards the borough's housing stock and delivery of affordable homes in excess of policy requirements. Nonetheless, I do not consider that these benefits – taken together with the others, as analysed above - either individually or cumulatively clearly outweigh the harm to the Green Belt, and the other harm arising. Accordingly very special circumstances do not exist.

4.0 Planning Balance and Conclusion

4.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 11 of the NPPF stipulates that planning decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay. However, where the most important policies for determining the application are out of date, permission should be granted

unless the benefits are significantly and demonstrably outweighed by the adverse effects; or the application of NPPF policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the NPPF establishes that the Green Belt is an 'area or asset of particular importance'.

- 4.2 As is the case with this appeal, the Council cannot demonstrate a five year housing land supply and accordingly the development plan policies most important to the determination of the appeal may be considered to be out of date. For the avoidance of doubt, these policies are:

Hertsmere Core Strategy (2013)

- SP1 Creating Sustainable development
- SP2 Presumption in favour of sustainable development
- CS1 The supply of new homes
- CS2 The location of new homes
- CS3 Housing delivery and infrastructure
- CS4 Affordable Housing
- CS13 The Green Belt

Site Allocations and Development Management Policies Plan (2016)

- SADM26 Development Standards in the Green Belt

- 4.3 Policies which are deemed to be out of date do not necessarily attract no weight at all in planning decisions, noting that weight is a matter of planning judgement for the decision-maker depending on the circumstances of each case, rather than one of policy or law. In my view, the policies above relating to Green Belt (CS13 and SADM26) may be considered out of date insofar as they relate to the restriction of development (for housing or otherwise), though should continue to carry weight as they are broadly consistent with NPPF Green Belt policy (per NPPF paragraph 219). Ultimately, if the proposals comply with national Green Belt policy (i.e. there are very special circumstances here), they will warrant permission, and if they do not, they will

not, so the relative importance of local plan policies which mirror that national policy test is diminished somewhat.

4.4 The appeal site was allocated for housing development (around 195 homes) within the draft Local Plan (Regulation 18, dated September 2021) under policy H10 (CD3.3). The site was known as R3. The site also included the provision of land to facilitate any future expansion of Newberries Primary School and the provision of a new medical facility, should an appropriate site not be found within the village centre. However, I would draw attention to the fact that the test of 'exceptional circumstances' to alter Green Belt boundaries as part of the Local 14 Plan process is lesser than the test of 'very special circumstances' which must be met here ([2019] EWHC 3242 (Admin)) (CD6.3). In any event, the set-aside plan, and the draft allocation, should not carry any weight because it has been set aside. There is no prospect of it ever being adopted. Paragraph 48 of the NPPF states that LPAs may give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging local plan (the more advanced its preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies, and;
- the degree of consistency of the relevant policies in the emerging plan to the NPPF.

4.5 The set-aside Local Plan was, in any event, at an early stage of preparation (Regulation 18). The public consultation drew almost 18,000 responses, a significant proportion of which raised objections relating to the draft housing allocations, proposed alterations to Green Belt boundaries, and housing projections. Accordingly, the decision was taken by Full Council on 27 April 2022 to 'set-aside' the emerging Local Plan. With particular regard to the first two bullet points of NPPF paragraph 48, the draft local plan is therefore considered not to carry any weight for the purposes of this appeal. It is clear, though, that even before it was set aside, its provisions would not have attracted very much weight at all, in line with the approach mandated by NPPF paragraph 48. It was at a very early stage, and there were very significant unresolved objections to the draft housing allocations.

4.6 The planning balance therefore rests on the test at paragraph 148 of the NPPF. An assessment of the benefits of the scheme has been made at Section 3 of this Proof and is summarised within Table 1 below:

| | |
|--|---------------------|
| | |
| Housing Related Benefits: Market Housing | Significant Weight |
| Housing Related Benefits: Affordable Housing | Significant Weight |
| School Land Provision | Very Limited Weight |
| Medical Facility Provision | Very Limited Weight |
| RIGS Enhancements | Very Limited Weight |
| Biodiversity Benefits | Limited Weight |
| Economic and Social Benefits | Limited Weight |
| Sustainability and Environmental Benefits | No Weight |

Table 1: Public Benefits

- 4.7 The development would be inappropriate development in the Green Belt, which is harmful by definition. This harm is required to carry substantial weight per NPPF paragraph 148. Further harm to the Green Belt has been identified in addition to this definitional harm; harm to Green Belt openness (visual and spatial) and conflict with Green Belt purposes. Overall I consider that the harm to the Green Belt must carry substantial weight. In terms of 'other harm', harm to the character and appearance of the landscape has been identified. This harm is considered to carry significant weight.
- 4.8 In my view the test at paragraph 148 is failed: the benefits of the scheme, taken together, do not clearly outweigh the harm that has been identified. Accordingly, very special circumstances do not exist. NPPF paragraph 147 therefore indicates that planning permission be refused, and that is my recommendation to this Inquiry. The proposals should be determined in accordance with the development plan here, and permission refused.

5.0 Summary

- 5.1 This Proof relates to Green Belt and planning balance matters, and should be read alongside the Council's Statement of Case, as well as the Landscape Proof of Evidence provided by Mr. Radmall
- 5.2 Section 2.0 of the Proof sets out the key policies and material considerations relevant to this appeal. Section 3.0 sets out the Green Belt assessment, including identification of Green Belt harm and any other harm before approaching the appellant's case for very special circumstances. I conclude that the scheme would result in definitional harm to the Green Belt, as well as harm to Green Belt openness (spatial and visual) and conflict with Green Belt purposes. These are afforded substantial weight in line with the requirements of NPPF paragraph 148. There is also harm to character and appearance, as described by Mr. Radmall, and to which significant weight is attached.
- 5.3 The appellant's case for very special circumstances is addressed in full and justification is set out for the weighting that the Council affords to each of the cited benefits. The housing related benefits, both for market and affordable housing, are each afforded significant weight. The provision of land for Newberries Primary School to use as additional sports pitches, the provision of a new medical facility and the proposed enhancements and accessibility to the adjacent Puddingstone are all afforded very limited weight. The provision of a 10% biodiversity net gain and economic or social benefits that may arise from the scheme are independently afforded limited weight. The environmental and sustainability benefits proposed are afforded no weight, and are not considered a benefit.
- 5.4 A planning balance is set out at section 4.0 of this Proof. I consider that the balance rests on the test at paragraph 148 of the NPPF, and that this test is failed given that the benefits of the scheme do not clearly outweigh the harms as I have identified and analysed them. There are therefore no very special circumstances. Accordingly the appeal should be dismissed.