

**PLANNING PROOF OF  
EVIDENCE on behalf of Shenley  
Parish Council**

**Appeal by Griggs (Options) Ltd  
under s78 Town and Country  
Planning Act 1990 (as  
amended) (Appeal Reference  
APP/N1920/W/22/3311193)**

**Evidence of: BRIGID TAYLOR  
MSc LLB MRTPI PIEMA MIENVS**

**Land Adjacent And To The Rear  
Of 52 Harris Lane Shenley  
Hertfordshire (LPA Application  
Reference 22/0971/OUT)**

**March 2023**



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## 1 EXECUTIVE SUMMARY

### *Qualifications and experience*

1.1 My name is Brigid Taylor. I am a Chartered Town Planner with an MSc Degree in Spatial Planning and Development, and have been employed in the planning and development sector since 2002, initially as a planning solicitor before moving in to planning and environmental consultancy part way through my career.

### *The appeal site and its surroundings*

1.2 The character of the site and its relationship with surrounding built form within Shenley village (to the south and west), and the rural commercial business and the open countryside (to the north and east) are key considerations.

1.3 The site is an open grassed field, currently undeveloped. Due to its topography, there are far reaching views from the site entrance across the site; and also from public rights of way in the east back towards the site.

1.4 The site is within the Green Belt, as is the adjacent part of Shenley village.

### *Site history and appeal proposal*

1.5 The planning history is of limited relevance to the appeal but confirms an existing lawful use for agriculture.

1.6 The appeal scheme is submitted in outline with all matters reserved except access. Illustrative layout options have been presented along with indicative storey heights and these appear to have formed the basis of assessment rather than any fixed parameter plans to be approved/ secured by condition.

1.7 There was a single reason for refusal, relating to harm to the Green Belt. This appeal also considers impacts on character and appearance of the area and potential noise impacts/ unsuitability of the site due to its proximity to a nearby rural business.



### ***Planning policy context***

1.8 The Development Plan comprises the Core Strategy (2013), Site Allocations and Development Management Policies Plan (2016) and Shenley Neighbourhood Plan (2021).

1.9 No weight can be attributed to the draft Regulation 18 Local Plan, following the decision to set this aside. The evidence base upon which that strategy was developed does remain relevant. Other material considerations include the NPPF, PPG, and data on housing land supply, affordable housing and custom and self build demand and delivery.

### ***Main issues for determination***

1.10 The main issues for determination are:

- a. The extent of harm to the Green Belt and the weight to be attached to this;
- b. Other harm arising from the proposal (including impacts on character and appearance, and noise) and the weight to be attached to this;
- c. Whether the harm identified is clearly outweighed by other considerations so as to amount to 'Very Special Circumstances' (VSC);
- d. Whether the policies protecting the Green Belt provide a clear reason for refusal for the purposes of paragraph 11d(i) NPPF?

### ***The extent of harm to the Green Belt and weight to be attached to this***

1.11 All parties agree the proposal is defined as 'inappropriate development' (para 147 NPPF) as it involves the construction of new buildings in the Green Belt and does meet any of the exceptions in paragraphs 149-150. Paragraph 148 dictates that substantial weight must be given to this 'definitional harm'.

1.12 Substantial weight should also be given to the harm the proposal causes to the openness of the Green Belt in this location. Openness involves both spatial and visual aspects. It requires consideration of the impact on views across the site, and also of the impact of less visible features, such as roads, engineering infrastructure, driveways, which might



reduce the openness of the site despite having a low profile. Coupled with the need for a 2.4m acoustic fence, I am of the opinion that the proposal will cause a substantial loss of openness of this site, which should be afforded substantial weight in the planning balance.

1.13 I also consider there is harm to Green Belt purposes, particularly purpose (c) – to assist in safeguarding the countryside from encroachment, and this attracts substantial weight. The Green Belt review suggests that the an area in the north-west of sub-parcel SA-27 (in which this appeal site is located) is “less important” than the rest of the sub-parcel in safeguarding against encroachment. The methodology for this assessment was based solely upon measures of existing encroachment including a) percentage built form coverage and b) influence of semi-urban character where on the edge of a built up area. As Gristwood and Toms (which is also in this ‘north west corner of sub-parcel SA-27) is partially built up, this appears to have been factored into the conclusion that the north-west part is “less important” despite the fact it is a rural countryside business as opposed to suburban housing estate in a built up area. The appeal site has no built form, meaning the only reason it was considered ‘less important’ is because it is adjacent to the built up area of Shenley. The methodology did not consider at all the fact there is a clear delineation and defensible boundary between the built up area and the open countryside beyond, and that the site’s boundaries mark historic boundaries. I am of the view that the appeal site plays a strong role in preventing the encroachment of development into the countryside around Shenley. Whilst it might have been judged to be ‘less important’ than the areas of sub-parcel SA-27 further removed from the village, it nonetheless plays a key role in preventing gradual encroachment outwards from the settlement.

#### ***Other harm arising***

1.14 Shenley Parish Council’s landscape witness has concluded that there will be major adverse landscape effects (on the site itself, the small woodland copse to the south-west, and for the historic routeway and hedgerow along Harris Lane and the playing field. On two of the site boundaries, there would be moderate to moderate/major landscape effects. There would be a major adverse effect on the rural setting of the



Conservation Area and moderate to major adverse effect on the Landscape Character Area 21C. I give these landscape character impacts significant weight.

- 1.15 The Parish Council's landscape witness has also assessed eight representative viewpoints and compared an assessment of these against the appellant's assessment. The conclusion reached is that there would be major adverse visual effects for a number of viewpoints (Viewpoint 2 Harris Lane looking north; Viewpoint 3 Harris Lane Playing Fields; Viewpoint 6 PRoW Shenley 019; and for close neighbours at 46-52 Harris Lane and Anderson Road (north side). In addition there would be moderately adverse visual effects at Viewpoint 1(Harris Lane looking south); Viewpoint 7 (PRoW 018); and for neighbours living in the northern apartment block at Birchwood. Overall the witness concludes there is a significant adverse impact on both landscape character and visual amenity, and I afford this significant weight in the planning balance.
- 1.16 The appeal scheme will introduce new residential development in close proximity to an existing rural commercial enterprise. As an 'agent of change' it is the responsibility of the appellant to assess the likelihood of significant effects on future occupants, considering not just the current scale of operations at the neighbouring arboricultural business but also any that they are permitted to carry out.
- 1.17 Gristwood and Toms have recently sought retrospective permission to regularise the scale of operations which have been ongoing for some time at the site. The application documents make clear there are 60-70 staff associated with the business, serving 30-40 local authority contracts. The business generates 281 total vehicles movements a day, including LGV, MGV and HGV movements and 75% of these use the access at Harris Lane, adjacent to the appeal site. A noise impact assessment has been undertaken on behalf of Shenley Parish Council. This concludes that even with the erection of a 2.4m acoustic fence along the northern boundary, elevated noise levels will be seen in multiple locations across the site, causing significant impact. Whilst no layout has been proposed at this point in time, there is limited space for including any noise buffer or set back from the northern boundary without increasing density/ heights elsewhere on the site. There is therefore a real risk of future occupants experiencing significant noise



impact in outdoor amenity areas or internal environments with windows open, which could impact on the operation of this long standing rural commercial business. I give this significant weight.

***Whether VSCs exist, the weight to be given to them, and whether they collectively outweigh the identified harm.***

1.18 The appellant has suggested a number of VSCs, which are addressed in turn below.

***Contribution to Housing Land Supply (Market, Affordable and Self Build)***

1.19 The weight to be given to housing land supply shortfall is a matter for the Inspector and will depend on factors such as the extent of the shortfall, how long the deficit is likely to persist, what steps the LPA could take to reduce it, and the scale of impact on this shortfall.

1.20 In my view, the contribution to housing land supply attracts significant weight. This is based upon a) the scale of the proposal, b) only 2.25 year's housing supply in this LPA area; c) evidence of affordable housing need and contribution to this; d) demand for self and custom build housing and delivery of the same; e) the fact that evidence base work has progressed to support decisions on a new spatial strategy and new allocations; f) the adoption of a Site Allocations Development Plan in 2016, after the introduction of the NPPF in 2012. That strategy was examined and found to be sound, and did release land from the Green Belt in the north of Shenley.

1.21 This compares with other appeal decisions in recent months where 'very substantial weight' has been afforded to contribution to housing supply shortfall in other LPA areas. In the most part those other decisions relate to larger schemes (367 in Buckinghamshire; 100 straddling St Albans and Welwyn Hatfield and 167 in North Hertfordshire) which make a larger contribution to supply than this smaller scheme of up to 37 dwellings. Those appeal decisions also involved LPA areas where no plan/ strategy had been advanced for many years, and they continued to rely on 'pre-NPPF' Local Plans dating back to 1997 and 2011 (Chiltern/ Bucks); 1994 and 2000 (St Albans) and 2005 (Welwyn Hatfield). By contrast, in Hertsmere the Site Allocations plan was adopted in 2016.



### *Affordable Housing in excess of policy requirements*

1.22 Significant weight has already been afforded to the contribution made to affordable housing need above as part of the overall supply.

1.23 The proposal delivers 40% affordable housing against a policy requirement of 35%. This equates to 2 additional affordable housing units. A number of other recent large proposals have advanced an offer of 40% affordable housing in Hertsmere, demonstrating this is seen as being viable. I am of the view that the 2 extra units make a limited contribution and therefore attracts moderate weight.

### *Delivery of housing within the deficit period*

1.24 As the appeal scheme is submitted in outline, I afford this limited weight as a VSC justifying inappropriate development in the Green Belt. It is still necessary to develop the detailed design, design a layout which works with the high baseline noise environment, submit a reserved matters application for approval and discharge any pre-commencement conditions. Given the site is greenfield with no development history it will also be necessary to undertake utilities and engineering work which will influence timings. The site also has overhead wires running across its south-western extent so there will be the need for consultation with the statutory undertaken to ensure agreeable maintenance arrangements and safety.

### *Acceptance in the Regulation 18 Local Plan of the need to release Green Belt land*

1.25 The Regulation 18 plan has been set aside so attracts no weight. A new strategy might still involve Green Belt release but focus on other sites, such as those which are PDL (not inappropriate development in the Green Belt), or those which perform more weakly against the Green Belt test.

1.26 The ministerial statement issued on 6 December 2022 is material consideration of limited weight. The statement signalled an intention to alter the NPPF to remove the requirement to review Green Belt boundaries so as to meet housing need in full; and to





allow for a housing need below the standard figure where an effective use of land would be made and 'all other reasonable options' to meet housing need have been considered.

#### *Proposed Allocation of the site in draft regulation 18 plan*

1.27 The appeal site was selected for allocation in a plan which has been set aside. The proposed allocation carries not weight, but the conclusion of the HELAA assessment remains relevant. That report noted the site would not be suitable for this development under the current policy context, and was only short listed as part of a strategy of Green Belt release. Given the plan and draft allocations never proceeded to examination, the 'exceptional circumstances' required for amendment of Green Belt boundaries via spatial plan were never made out nor examined. A number of other sites around Shenley were considered in the HELAA, some of which could accommodate a larger quantum of development than the appeal site and one of which is partly PDL. As such, I given no weight, as a VSC, to the site's proposed allocation in the set aside plan.

#### *Provision of Self Build Plots*

1.28 As Hertsmere do not have a policy for delivery of self build, and delivery rates are not fully meeting demand on the register, I would give this benefit moderate weight, despite the limited scale of the contribution (3 plots). Other larger proposals are proposing delivery of self build plots (for example, 22/1071/OUT proposes 15.5 plots and 23/0053/OUT proposed 4 plots).

#### *Sustainability of the location*

1.29 The proximity to local services and facilities of Shenley is a material consideration but I do not afford this any more than limited weight as a VSC justifying inappropriate development in the Green Belt. Shenley is ranked 3 out of 10/ 'Low' for accessibility in the Settlement Hierarchy and still relies on larger settlements for employment and other settlements. The primary school lacks physical space to expand to meet additional demand so unless a larger development could bring forward a new site, there is a risk that growth could cause additional trips to schools further afield.



### *Provision of public open space*

1.30 The provision of a small area of open space within a housing site, directly opposite an existing area of public open space with equipped children's play area, is of limited weight. The Open Space Assessment Report 2019 and associated Standard Paper found there is a provision of 1.05ha per 1,000 head of population. This exceeds the guideline standard 0.8 ha per 1,000 head of population.

### *Economic, social and environmental benefits*

1.31 I afford the economic benefits of the proposal no more than limited weight, as these are limited to construction employment and local spending, which would arise from any development of this nature.

1.32 Whilst Biodiversity Net Gain is proposed, this relies entirely on off-site provision outside the LPA's administrative area. The biodiversity enhancement is on a parcel of land which formed part of a consented scheme for 129 dwellings (5/2014/3250) but which was omitted from the landscaping proposals. The proposal is to create ponds, plant trees and infill the hedgerow on the BNG site, adjacent to the landscaped ornamental garden for that housing development. On the appeal site itself, there will be a significant loss of biodiversity value (-68.25%). I therefore do not give the BNG any weight as a VSC justifying inappropriate development on this Green Belt site; there is no site specific biodiversity benefits.

1.33 Social benefits have already been considered and addressed (open space and housing delivery).

### *Conclusion on VSCs*

1.34 In summary I have identified substantial harm to the Green Belt, which includes definitional harm, harm to openness and to the purposes of designation. This attracts substantial weight.

1.35 There is significant harm in terms of changes to landscape character and impacts on views. I afford this significant weight.



- 1.36 There is significant harm in terms of introduction of noise sensitive receptors in proximity to an existing rural business; and the risk of statutory nuisance in outdoor amenity areas and when opening windows. I afford this significant weight.
- 1.37 I give significant weight to the contribution made to housing supply, including market, affordable and self build dwellings.
- 1.38 I give moderate weight to the contribution made by the two extra affordable dwellings, which would be delivered, over and above the requirements of a policy compliant scheme.
- 1.39 I give limited weight to the prospect of fast housing delivery within the 5 year deficit period.
- 1.40 I give moderate weight to the limited contribution made by 3 self build plots.
- 1.41 I give limited weight to the site's sustainable location, the provision of public open space and the economic, environmental and social benefits of the proposal.
- 1.42 I do not give any weight to the site's allocation in the now set aside Regulation 18 plan, nor to the strategy of Green Belt release adopted in that plan.
- 1.43 Taking account of the above, I do not consider that the VSCs collectively outweigh the substantial harm which has been identified to the Green Belt.
- 1.44 Additional harm has been identified in terms of impact on character and appearance, and noise impacts to future occupiers which could constrain the operations of on an existing commercial business. I do not consider that the identified VSCs outweigh the totality of harm (including harm to Green Belt, impacts on character and noise issues).

### ***Planning Balance and Conclusion***

- 1.45 S38(6) of the Planning and Compulsory Purchase Act 2004 demands that planning applications are determined in accordance with the development plan unless material



considerations dictate otherwise. As policy for the supply of housing is out of date for the purposes of paragraph 11(d) of the NPPF, the NPPF is the main material consideration. Paragraph 11(d) firstly requires consideration of whether any policies in the NPPF which protect areas or assets of particular importance provide a clear reason for refusing the development (NPPF paragraph 11(d)(i)) .

1.46 In this case, there is substantial harm to the Green Belt which is not outweighed by VSCs. There is, therefore a clear reason for refusal for the purposes of paragraph 11(d)(i).

1.47 Para 11(d)(i) is not passed. The appeal should in my view be dismissed.



## 2 INTRODUCTION

### QUALIFICATIONS AND EXPERIENCE

- 2.1 My name is Brigid Taylor. I hold a MSc Degree (with distinction) in Spatial Planning and Development (Henley Business School at Reading University); a BSc in Ecology/ Geography (Canterbury University, New Zealand), and a Bachelor of Laws degree (Canterbury University, New Zealand).
- 2.2 I am a Chartered Town Planner, having been elected as a Member of the Royal Town Planning Institute on 25 June 2021 via the Experienced Practitioner Route. (EP-APC). I am also a Practitioner of the Institute of Environmental Management and Assessment (PIEMA) and a Full Member of the Institution of Environmental Sciences (MIEnvS).
- 2.3 Between 2002 and 2012 I was employed as a planning solicitor (including 4 years in private practice in New Zealand, 3.25 years in UK local government and 2 years in the private sector in the UK). Between December 2012 and August 2020 I was employed in the planning and environmental consultancy sector, working on major residential led/ mixed use planning applications. My role was particularly focused upon environmental planning inputs, and Environmental Impact Assessment of major residential development projects. This included policy analysis, commission and review of technical information and reports, stakeholder engagement and liaison with local authority staff through to the grant of planning permission and discharge of conditions. Between September 2020 and October 2021 I was employed as Principal Planner in the Winchester City Council Strategic Policy team, working on the emerging local plan. My role involved site assessment of potential strategic housing allocations, development of the evidence base underpinning emerging policy, preparation of documentation for the Regulation 18 public consultation, analysis of consultation feedback and reporting to members/ Local Plan Advisory Group of the Council. I have been employed in my current role, at Bell Cornwell LLP (an independent planning consultancy) since November 2021, where I have a particular focus on development control / management and residential development applications.



2.4 My evidence for this s78 appeal is true and has been prepared and is given by me in accordance with the guidance of the Royal Town Planning Institute of which I am a Member. The opinions expressed are my true and professional opinions. I received instructions to be a witness for this appeal in February 2023, and have considered the reason for refusal and viewed the application in context of the planning history and development plan context. I have since visited the site so I am familiar with it and the surrounding area.

### **SCOPE OF EVIDENCE**

2.5 This Planning Proof of Evidence has been prepared by me on behalf of Shenley Parish Council who is a Rule 6 party to the planning appeal submitted by Griggs (Options) Ltd pursuant to s78 of the Town and Country Planning Act 1990 (as amended).

2.6 In this proof I shall refer to the Statements of Case and Statements of Common Ground where relevant.

2.7 My Proof of Evidence is to be read in conjunction with the expert evidence provided by other parties on behalf of Shenley Parish Council:

- Louise Hooper of LHLA who will address landscape character and visual impacts;
- Reuben Peckham of 24Acoustics who will address noise impacts and suitability of the site for the proposed use, with respect to the adjacent business.

2.8 In this Proof of Evidence, I outline the planning policy context against which the appeal scheme is to be assessed. In particular, I set out my assessment of the proposal's harm to the Green Belt, and also the other harm identified, including impacts on character and appearance of the area and the suitability of the site for residential development in close proximity to a rural business which is a source of noise. I then set out my assessment of the 'very special circumstances' ("VSC") put forward by the appellant, and reach the conclusion that these do not collectively outweigh the harm to the Green Belt and the other harm identified. Finally, I undertake a planning balance exercise, pursuant to paragraph 11(d)(i) of the NPPF and conclude that there is a clear reason for the refusal



of the proposal, in so far as it amounts to inappropriate development in the Green Belt and there are not VSC which outweigh the harm caused.



### **3 THE APPEAL SITE AND ITS SURROUNDINGS**

- 3.1 The character of the site and its relationship with surrounding built form within Shenley village (to the south and west) and the commercial operation and open countryside (to the north and east) are key considerations in determining whether or not the appeal proposal is appropriate. A detailed description of the site and its surroundings is set out in Section 2 of Shenley Parish Council's Statement of Case (CDC.3).
- 3.2 The key points of note are that the site is an open grassed field, currently undeveloped, and due to the topography, there are far reaching views from the site entrance across the site / Green Belt, towards 'High Canons'. The Green Belt designation applies equally to the site, and the adjacent part of Shenley village within the settlement boundary. The commercial site to the north (Gristwood and Toms), whilst including an ancillary office use, is a rural enterprise involving heavy goods vehicles and machinery associated with processing of wood.





## 4 SITE PLANNING HISTORY AND THE APPEAL PROPOSAL

### ***Introduction***

- 4.1 This appeal follows the decision of Hertsmere Borough Council (who are the local planning authority, “LPA”) to refuse an application for planning permission (LPA Ref: 22/0971/OUT) for residential redevelopment of an undeveloped parcel of land within the Metropolitan Green Belt, and on the edge of the settlement of Shenley.

### ***Site Planning History***

- 4.2 The site planning history is limited to two lawful development certificate applications, submitted in 2014, seeking to establish a lawful existing use as part of the residential curtilage of 52 Harris Lane. One of these was withdrawn, the other refused. The extent of residential curtilage is a matter of fact rather than a planning use class which can be regularised by such an application.
- 4.3 Given the outcome of the two applications, this history is of limited relevance to the present appeal. They do however confirm that the lawful use of the site would appear to be agriculture.

### ***The Appeal Scheme***

- 4.4 The planning application, submitted in June 2022, sought outline planning permission for a residential development of this undeveloped 1.7ha site situated adjacent to, but outside of, the settlement of Shenley. The site itself, and the adjacent area of Shenley are designated ‘Green Belt’ (with the settlement itself being ‘washed over’ by that Green Belt designation (as opposed to being inset).
- 4.5 Whilst originally proposing up to 46 dwellings, the scale of the proposal was reduced during the course of the application in response to consultation feedback. The amended scheme, which was the basis of the decision subject to appeal is described as follows:

*“Construction of up to 37 dwellings with associated landscaping and open space to include access from Harris Lane (Outline Application with Appearance, Landscaping, Layout and Scale Reserved).”*



- 4.6 Two illustrative layout options were presented, along with indicative storey heights and an illustrative landscape strategy. No parameter plans were submitted to secure the maximum and minimum envelopes of the proposed development, nor to form the basis of the assessment of the proposals.

### ***Reasons for Refusal***

- 4.7 The LPA refused permission on the following basis:

*“01. Per paragraph 11 of the NPPF, 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 (VSCs) 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 substantial harm to the Green Belt, by virtue of inappropriateness and due to the significant harm to openness that would arise. Accordingly, VSCs do not arise here.*

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

- 4.8 This single reason for refusal is referred to in this proof as the “RFR”.

### ***Other issues to be assessed***

- 4.9 This appeal also requires consideration of the impact of the proposal on the character and appearance of the area, and potential for noise impact/ unsuitability of the site for the proposal with respect to a nearby rural business. These matters did not form part of



the reasons for refusal as set out in the decision notice (CDB.2) but were covered in the case officer's report (CDB.1).



## 5 PLANNING POLICY CONTEXT - THE DEVELOPMENT PLAN

### INTRODUCTION

5.1 In this section of my evidence, I identify the planning policies of most relevance to this appeal. An assessment of the proposal against these proposals follows later.

### THE DEVELOPMENT PLAN

5.2 The Development Plan comprises:

- Hertsmere Core Strategy (“CS”) adopted January 2013 (CDE.1)
- Site Allocations and Development Management Policies (“SADMP”) adopted November 2016 (CDE.2)
- Shenley Neighbourhood Plan (“SNP”) adopted May 2021. (CDE.3)

#### *Hertsmere Core Strategy*

5.3 The Core Strategy sets out the strategic vision, objectives and spatial strategy for the Borough. The policies of relevance to this application are listed below, as set out in the Committee report and decision notice. Those in bold are the key policies of relevance to the main issues in this appeal and which this evidence and those of others at this inquiry relate to.

#### **Policy SP1 (Creating Sustainable Development)**

#### **Policy SP2 (Presumption in Favour of Sustainable Development)**

Policy CS1 (The Supply of New Homes)

Policy CD2 (The Location of New Homes)

#### **Policy CS4 (Affordable Housing)**

Policy CS7 (Housing Mix)

Policy CS12 (The Enhancement of the Natural Environment)



**Policy CS13 (The Green Belt)**

Policy CS14 (Protection or Enhancement of Historic Heritage Assets)

Policy CS15 (Promoting Recreational Access to Open Spaces and the Countryside)

**Policy CS16 (Environment Impact of New Development)**

Policy CS17 (Energy and CO2 Reductions)

Policy CS21 (Standard Charges and Other Planning Obligations)

Policy CS22 (Securing a High Quality and Accessible Environment)

Policy CS24 (Development and Accessibility to Services and Employment)

Policy CS25 (Accessibility and Parking)

Policy CS26 (Promoting Alternatives to the Car)

***Site Allocations and Development Management Policies Plan***

5.4 The SADMP allocates sites for various uses, including housing, and also sets out development management policies against which future planning applications will be assessed. The site is not allocated for residential use in the SADMP. The following policies are of relevance to the proposal. Those in bold are the key policies of relevance to the reasons for refusal, and which this evidence and those of others at this inquiry relate to.

Policy SADM1 (Housing Allocations)

Policy SADM3 (Residential Developments)

Policy SADM10 (Biodiversity and Habitats)

Policy SADM11 (Landscape Character)



Policy SADM12 (Trees, Landscaping and Development)

Policy SADM13 (The Water Environment)

Policy SADM14 (Flood Risk)

Policy SADM15 (Sustainable Drainage Systems)

Policy SADM17 (Water Supply and Waste Water)

Policy SADM19 (Waste Storage in New Development)

**Policy SADM20 (Environmental Pollution and Development)**

**Policy SADM26 (Development Standards in the Green Belt)**

Policy SADM29 (Heritage Assets)

Policy SADM30 (Design Principles)

Policy SADM40 (Highway Access Criteria for New Developments)

### ***Shenley Neighbourhood Plan***

- 5.5 The SNP sets out development management policies for development in Shenley. Whilst there are policies of relevance to the proposal, there are none of particular relevance to the RFL and the issues for consideration in this appeal.

### **OTHER MATERIAL CONSIDERATIONS**

#### ***Emerging Local Plan***

- 5.6 The LPA has previously undertaken work in connection with the review/ updating of its spatial strategy and planning policies. The Appellant's Statement of Case (at paragraph 1.5) suggests Shenley was "one of the five main communities in the Borough, being the most sustainable location for growth in the Borough".



- 5.7 Shenley was not categorised as a ‘Key Settlement’ in the draft Regulation 18 Local plan. As set out in Table 1 of that plan, ‘Key Settlements’ included Borehamwood and Elstree (Tier 1), Potters Bar and Bushey (Tier 2) and Radlett (Tier 3). Shenley, by contrast, was categorised as a ‘Key Village’, in Tier 4 of the settlement hierarchy. The spatial strategy sought to deliver 12,160 homes over the plan period, and prioritised the delivery of homes in the built up areas of these ‘Key Settlements’, where possible utilising brownfield land and optimising site densities. 6,020 homes were proposed for allocation (with 2,765 more to be delivered on urban brownfield) in the ‘Key Settlements’ with Green Belt release only where exceptional circumstances could be demonstrated (as required by the NPPF) or the proposal involved redevelopment of previously developed land. An allowance was made for limited growth in the lower tier villages such as Shenley. It was proposed that 290 homes could be allocated at Shenley, to include 50 at the appeal site, and 140 homes and 100 extra care units at another larger site immediately to the south-west of Shenley (HEL348/350). In total Shenley was estimated to accommodate 350 of the 12,160 homes planned for (including allocations, estimated commitments and windfall) (2.9% of the target). I therefore disagree that Shenley was considered the most sustainable location for growth in the draft spatial strategy.
- 5.8 A decision was taken in April 2022, by the Full Council, to set aside the regulation 18 draft Local Plan which had been published for consultation in September 2021. This decision was taken in response to the feedback received on the development strategy and approach to Green Belt release to accommodate housing need.
- 5.9 Therefore, in line with paragraph 48 of the NPPF, no weight can be attributed to the Regulation 18 draft Local Plan which was prepared and published for consultation in September 2021.
- 5.10 The evidence base which underpinned that regulation 18 plan does still remain a material consideration. This includes, inter alia, the Green Belt review (CDE.33 to CDE.46), SHMA (CDE.28-30), Settlement Hierarchy review (CDE.48), Open Spaces study,



and Landscape Sensitivity Assessment (CDE.50) which are relevant to the issues for determination in this appeal.

### ***NPPF***

- 5.11 The National Planning Policy Framework (“NPPF” (2021) is a material consideration.
- 5.12 The Government is presently undertaking a technical consultation on proposed changes to the NPPF, which is expected to conclude by March 2023. It is therefore possible that the NPPF will be amended, subsequent to finalisation of this proof but prior to commencement of the public inquiry. If such changes are made they will be a material consideration.
- 5.13 In the meantime, the 6 December 2022 statement by the Rt Hon. Michael Gove MP (CDL.5) setting out the intended changes to the NPPF is a material consideration of limited weight. This confirmed the Government’s intention:
- To amend the NPPF by the end of April 2023
  - To continue to ensure valued landscapes are protected, particularly (inter alia) the Green Belt. National and local policy will be given sufficient weight to be able to “rebuff unwanted speculative ‘development by appeal’”.

### ***Housing Land Supply and Delivery***

- 5.14 The LPA’s housing land supply position statement for 2021/22 (CDE.10) states that:

*“Overall, the council’s updated 5 year land supply requirement, in accordance with the updated standardised methodology (July 2019) and if specifically using the 2014-based household projections, is 724 dwellings per annum (plus a 5% buffer), resulting in a revised 5 year land supply of 2.25 years.”*

- 5.15 The Housing Delivery Test results published on 14 January 2022 indicate the LPA had a 2021 HDT measurement of 88%.





### ***Planning Practice Guidance***

- 5.16 Planning practice guidance (“PPG”) on the role of the Green Belt in the planning system (published July 2019) is also a material consideration. This provides clarification on the factors which may be taken into account when considering the impact of development on the ‘openness of the Green Belt’ (Paragraph: 001 Reference ID: 64-001-20190722 Revision date: 22 07 2019).
- 5.17 PPG on housing supply and delivery, including the calculation of ‘5 year housing land supply’, the need for buffers (Paragraph: 022 Reference ID: 68-022-20190722 Revision date: 22 July 2019) and the relevance of the housing delivery test results to this.
- 5.18 There is also PPG on Self and Custom Build Housing covering the requirement to keep registers of demand for the same, the relationship between this evidence of demand and Strategic Housing Market Assessments (SHMAs) which cover whole of market housing demand (Paragraph: 011 Reference ID: 57-011-20210208 Revision date: 08 02 2021) and the duty to provide permission for suitable services plots so as to meet demand in their area (Paragraph: 023 Reference ID: 57-023-201760728 Revision date: 28 07 2017)
- 5.19 Useful guidance on the relevance of noise to planning is also set out in the PPG. This includes guidance on noise sensitive development (Paragraph: 001 Reference ID: 30-001-20190722 Revision date: 22 07 2019), noise exposure hierarchy tables (Paragraph: 005 Reference ID: 30-005-20190722 Revision date: 22 07 2019) and the risk of new development conflicting with existing businesses/ the ‘agent of change’ principle (Paragraph: 009 Reference ID: 30-009-20190722 Revision date: 22 07 2019).

### ***Affordable Housing Supplementary Planning Document (adopted 2015)***

- 5.20 The Affordable Housing Supplementary Planning Document (“SPD”) (CDE.7) was adopted in 2015, and has subsequently been updated in December 2022 to include a new table D2 to replace table D1 of the original, setting out updated standard financial contributions based upon more recent Land Registry sales data.



### ***Affordable Housing Demand***

- 5.21 Demand for affordable housing is set out in the South West Hertfordshire Local Housing Needs Assessment on behalf of Dacorum, Hertsmere, St Albans, Three Rivers and Watford Councils' (GL Hearn, Sept 2020). (CDE.25)

### ***Self Build Demand and Delivery Data***

- 5.22 The Government's latest data release for right to build register monitoring in Hertsmere (2020-2021) was issued May 2022. (CDE.17).<sup>1</sup>

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<sup>1</sup> <https://www.gov.uk/government/publications/self-build-and-custom-housebuilding-data-2016-2016-17-2017-18-and-2018-19>



## 6 MAIN ISSUES AND ASSESSMENT

### INTRODUCTION

- 6.1 The main issues to be assessed are in this appeal are:
- a. The extent of harm to the Green Belt, and the weight to be attached to this, including:
    - i. 'definitional harm' (by reason of inappropriateness);
    - ii. harm to the Green Belt's openness and permanence (which para 137 NPPF states as being the essential characteristics of Green Belt);
    - iii. impact on the purposes of the Green Belt spatial designation (which are set out in para 138 NPPF)
  - b. Other harm arising from the proposal, including:
    - i. The effect of the proposal on the character and appearance of the area (landscape and visual impacts); and
    - ii. Potential noise impacts, in terms of amenity of future occupiers and the proposal's compatibility, with particular regard to noise impacts, with existing rural business operations on the adjacent site.
  - c. Whether the harm identified (including harm to the Green Belt and other harm as set out above) is clearly outweighed by other considerations, so as to amount to the "very special circumstances" ("VSC") necessary to justify the development.
  - d. Based on the above, whether the application of policies protecting the Green Belt provide a clear reason for refusing the development proposed, for the purposes of paragraph 11d(i) NPPF.
- 6.2 When considering the weight to be given to factors causing harm or benefits/ VSC of the proposal, I apply the following sliding scale of weight (from most weight to least weight):



- Very substantial
- Significant
- Moderate
- Limited
- Very limited

## **THE EXTENT OF HARM TO THE GREEN BELT AND WEIGHT TO BE ATTACHED TO THIS**

### ***Harm by Reason of ‘Inappropriateness’ – “definitional harm”***

- 6.3 The appeal site is situated within the Metropolitan Green Belt. As per paragraph 137 of the NPPF, the Government attaches “great importance” to Green Belt designation.
- 6.4 “Inappropriate development” is, by definition, harmful to the Green Belt (paragraph 147) and substantial weight should be given to any such harm (paragraph 148).
- 6.5 All parties are in agreement that the proposal comprises “inappropriate development” for the purposes of paragraph 147 of the NPPF (as set out in paragraph 3 of the Planning Statement of Common Ground, CDD.1), as it involves the construction of new buildings in the Green Belt and does not fall within any of the exceptions to that definition set out in paragraphs 149 and 150 of the NPPF.
- 6.6 On that basis, there is ‘definitional harm’ to the Green Belt, which is to be given substantial weight.

### ***Harm to the Openness of the Green Belt***

- 6.7 Paragraph 137 of the NPPF states that the essential characteristics of Green Belt are its openness and its permanence. It is necessary to assess whether the proposal will cause harm to these essential characteristics, the extent of such harm, and what weight should be attributed to this
- 6.8 Planning practice guidance (Paragraph: 001 Reference ID: 64-001-20190722 Revision date: 22 07 2019) clarifies that assessment of whether a proposal impacts on the



openness of the Green Belt “requires a judgement based on the circumstances of the case” and, the courts have identified a number of matters which may be relevant, including but not limited to:

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

6.9 The appeal scheme proposes introduction of up to 37 dwellings, a new formed access onto Harris Lane and internal roads, and will likely also involve hard surfaces (such as driveways for car parking), domestic gardens and paraphernalia, and boundary fences between the dwellings (subject to detailed design). The appellant’s acoustic impact assessment also identifies the need to erect a 2.4 metre high solid acoustic fence along the northern boundary adjacent to Gristwood and Toms arboricultural business so as to achieve suitable noise environments in outdoor amenity spaces. The 37 dwellings would also generate additional traffic to and from the site. The Transport Assessment supporting the proposal was based on a higher quantum of up to 46 dwellings and concluded this would generate a maximum of 25 peak hour vehicle movements.

6.10 Given the site is at present an open parcel of land with no built development, the appeal scheme represents a significant spatial and visual intrusion into the Green Belt, causing substantial harm to its openness.

6.11 Whilst layout is a reserved matter, the illustrative plans show that in order to accommodate the maximum quantum proposed, whilst limiting heights to 2 to 2.5 storeys, a large majority of the site would be utilised for dwelling footprints, domestic gardens, roads, surface water attenuation and landscaping. As such, openness would be significantly impacted, in spatial terms.



- 6.12 There is also a significant impact on openness, in visual terms. Due to the topography of the site and surrounding area, the proposal would be highly visible in the long ranging views across the site from the settlement towards High Canons, and also from rights of way back towards the site and the village. No maximum building heights have been proposed, in the form of a parameter plan submitted for approval. Rather the appellant has provided an indicative plan suggesting heights of up to 2 to 2.5 storeys and it is this which has formed the basis of the assessment undertaken. This vertical intrusion into the site, impacting views towards the open countryside, will further compound the loss of spatial openness of this Green Belt site.
- 6.13 On this basis, I consider the proposal will cause a substantial loss of openness, which will be of permanent character, compromising the essential Green Belt characteristics of this site. This harm is to be given substantial weight (as required by para 148 NPPF).
- 6.14 The Appellant's Statement of Case seeks to address impacts on openness in paragraphs 7.7 to 7.12. They consider visual impacts/ views, how the development would relate to the form of the settlement adjacent, and the impact of landscaping. The Appellant's case makes little reference to the spatial aspect, instead focusing upon an assessment of views across the site and the benefits of landscape screening. It is suggested by the Appellant that the adjacent settlement has an "urbanising" effect on the location, and that due to the adjacent 'urban land-uses' and 'visual containment' of the site, there would not be a diminution of the 'perception of openness from outside the site', and 'minimal effects on the openness of the wider Green Belt'.
- 6.15 As set out above, there will be a clear impact on the openness of the site, in both spatial and visual terms. This involves not just the loss of a 'perception of openness' via altered views, but also a spatial loss of openness via the introduction of buildings, landscaping, gardens and acoustic fencing where there is presently none. It is agreed that the surrounding context has an impact on the character of this location, but that does not diminish the fact that the site is presently open, and would not be should the proposal be allowed.



6.16 In summary, I am of the view the proposal will cause a substantial loss of openness, which should be afforded substantial weight in the planning balance.

***Harm to the Purposes of Including Land within the Green Belt Spatial Designation***

6.17 It is also necessary to assess the degree of harm to the role of Green Belt designation as a spatial planning tool. Paragraph 138 of the NPPF states that the Green Belt serves five purposes:

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

6.18 Paragraph 22 of the Landscape SoCG sets out the Appellant and LPA's agreed position on the function of the appeal site in respect of each of these five purposes. I am in agreement with the LPA's position on the relevance of each of these to this appeal; Therefore, the purposes of most relevance to this appeal are (a) and (c) as set out above. As Shenley is not, of itself, a 'large built-up area', the site's role in respect of purpose (a) is limited to its role as part of the larger parcel 18. Therefore, my intention is to focus on purpose (c), and the site's role in assisting to safeguard the countryside from encroachment.

6.19 I agree that the site is identified as forming part of parcel 18 in the Stage 1 Green Belt,. The site forms part of parcel 18, which as a whole was found to be performing strongly against Green Belt purposes. In particular, parcel 18 scored well against the purpose of checking unrestricted sprawl of large built up areas (purpose 1b, score 3+); preventing neighbouring towns from merging (purpose 2, score 3) and assisting in safeguarding the countryside from encroachment (purpose 3, score 4).



- 6.20 As summarised in the HELAA assessment for this site (HEL390): parcel 18 “forms the wider gap between Borehamwood and London Colney. It maintains the overall openness of the gap and ensures its overall physical scale is protected. There are urbanising influences but the majority of the parcel consists of open fields with long views and maintains an unspoilt rural character.”
- 6.21 At Stage 2 of the Green Belt review, a more focussed and fine-grained assessment of sub-areas was undertaken, building on the Stage 1 assessment of the larger strategic role of parcel 18. The appeal site is within sub-area SA-27 of parcel 18. This area is focused to the east and south-east of Shenley, so includes ‘edge of settlement’ sites, such as this appeal site, and also other land further removed from the village. Gristwood and Toms, to the north of the site, is also included in this sub-parcel, at its north-western extent.
- 6.22 Overall, Sub-area SA-27 was found to strongly meet green belt purposes. It scored well against the purpose of preventing neighbouring towns from merging (purpose 2, score 3<sup>2</sup>) and assisting in safeguarding the countryside from encroachment (purpose 3, score 4<sup>3</sup>). Of relevance to this appeal is the conclusion that parcel of sub-area SA-27 was ‘partly less important’ and partly recommended for further consideration (despite strongly meeting the purposes of designation). A similar conclusion was reached regarding other land adjacent to Shenley (SA-28, to the south-west). The appeal site was in this area recommended for further consideration; it should be noted however, that exceptional circumstances for Green Belt release were not yet made out nor examined.
- 6.23 As set out at page 20-21 and table 3.7 of the Stage 2 report, the methodology for assessing a parcel’s performance against purpose (c) was based upon “openness (in terms of extent of existing built development) and the degree to which the Green Belt can be categorised as countryside.” No regard appears to have been given to matters such as whether there is a strong defensible boundary between the settlement and the countryside, as opposed to a gradual, mixed transition from one to the other. A

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<sup>2</sup> Score 3 = ‘Meets Criterion’ (table 3.2 on page 14 of Stage 2 Assessment Report)

<sup>3</sup> Score 4 = ‘Meets Criterion Relatively Strongly’





percentage of built form was calculated using GIS mapping, and looked at buildings, car parks and hard surfaces, but excluded roads. A qualitative assessment was then undertaken to identify the extent to which the area could be considered 'countryside' or 'rural'. As set out at the top of page 21 of the report, "semi-urban character was defined as land which begins on the edge of the fully built up area and contains a mix of urban and rural land uses before giving way to the wider countryside." Areas scoring 3 had less than 10% built form and/or possessed a largely rural character. Score 2 had less than 15% built form and a 'semi urban' character.

- 6.24 The assessment for SA-27, against purpose (c) concluded that overall, it has "an unspoilt rural character", much of it featuring a "strong sense of rurality, predominantly comprising arable fields", and with "undulating topography, which enables long views into the wider countryside..."
- 6.25 The western portion of the sub-area was noted to have 'urbanising influences' including views onto the residential properties of Shenley. Mention was also made of the "substantially sized arboriculturist business to the north-west" which is "screened from the interior of the sub-area by thick tree planting, contributing to a visually enclosed feel to [sic] in the north-west of the sub-area. Despite the urbanising features, the sub-area has a strong unspoilt rural character..."
- 6.26 The Step 5 categorisation concluded that SA-27 "meets purpose assessment criteria strongly, but north-western part makes a lesser contribution to the wider strategic Green Belt. North-western part is recommended for further consideration." (page 121 pf Stage 2 Annex). The Stage 2 report recommended two areas for further consideration, adjacent to Shenley – identified jointly as 'RC-3'. This includes the appeal site ('SH.5') and another parcel of land adjacent to Shenley village (to the north-west) identified as 'SH.2'.
- 6.27 Based on the methodology outlined above, in identifying 'the north-western part of SA-27' as being "less important", regard has been given to the extent of built form on Gristwood and Toms (which includes an office building, hardstanding and car parking areas), and also the edge of settlement location. No regard has been given to the fact



there is a strong defensible boundary between the settlement and the appeal site, such that no built form has encroached into the site to date.

- 6.28 The Stage 4 assessment found that the washed over area of Shenley within the Green Belt performs less strongly – reflecting the fact that this area is part of the built up settlement. The conclusion regarding the appeal site (as set out in page 58 of the Stage 4 report) was: “it is recommended that no alterations are made to this section of the Green Belt boundary.” As noted on page 61 of the report, the assessment was undertaken in October 2020, before HELAA sites had been shortlisted for allocation. Therefore, the report made clear that if any sites were proposed for inseting, such as the appeal site, “it will be necessary to further revise the proposed inset boundaries”.
- 6.29 Based on the above assessment and analysis, my understanding is that the Green Belt review concluded that the north-western part of SA-27 makes less of a contribution to the wider strategic Green Belt than other parts of the same sub-parcel. Those other parts meet the criteria strongly. It was not concluded that the north-western part performs weakly nor that there were exceptional circumstances which justified its release. The conclusion was only that it makes less of a contribution to Green Belt purposes than those other parts of the sub-area which perform strongly. This conclusion was based on a methodology which considered the extent of built form coverage at Gristwood and Toms, and the fact that this is an edge of settlement location where there is a mix of urban and rural character before giving way to the wider countryside. The north-western portion of the sub-parcel lies adjacent to the built up area of Shenley, whereas the remainder of the parcel lies further into the countryside, so this is not a surprising conclusion. It does not diminish, in my opinion, the role that the appeal site plays in preventing encroachment into the countryside.
- 6.30 The appeal site, in my view, does play a strong role in preventing the encroachment of development into the countryside around Shenley. Parcel 18 overall performs strongly. Sub-area SA-27 performs strongly, albeit with the north-western area being “less important” because of the existence of some built form at Gristwood and Toms and some sub-urban influence due to its position adjacent to the settlement.



6.31 In my view, the appeal site remains open in character, and strongly assists in safeguarding the countryside from encroachment, acting as a buffer between the settlement and the areas of countryside further to the east, and the rural arboriculture business to the north. Therefore, despite the finding that it might be ‘less important’ than other parcels of land which are further removed from washed over settlements, I consider it does still play a strong role in preventing the encroachment of Shenley into the countryside.

6.32 On that basis, I consider that there is significant harm to the purposes of the Green Belt spatial designation, which is to be given substantial weight (as required by para 148 NPPF).

***Conclusion regarding harm to the Green Belt***

6.33 Based on the above assessment, I have identified substantial harm to the Green Belt, including:

- Definitional harm – the proposal is defined as ‘inappropriate development’ in the Green Belt as it involves the construction of new buildings and does not fall within any of the exceptions provide din paragraphs 149 and 150 of the NPPF.
- Harm to the essential characteristics of the Green Belt – its openness, and permanence; and
- Harm to the role/purpose of Green Belt designation in this area, as a spatial planning tool.

6.34 Policy CS13 of the Core Strategy reinforces that development proposals will be assessed in line with NPPF Green Belt policy.

6.35 The NPPF directs (para 147) that inappropriate development should not be approved except in ‘VSC’ (para 147) and ‘VSC’ will not exist unless the potential harm by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations. I therefore, move on now to consider any other harm arising from the proposal, before considering whether VSC exist, the weight to be attributed to



them, and whether collectively, these VSC outweigh the substantial harm which has been identified.

## **OTHER HARM ARISING FROM THE PROPOSAL AND WEIGHT TO BE ATTACHED TO THIS**

### ***The effect of the proposal on the character and appearance of the area***

- 6.36 The appeal site comprises of a parcel of land of approximately 1.7 hectares on the eastern edge of Shenley. The character of the site is that of an ‘edge of settlement site’, but with clear views across the site towards the open countryside. To the south and south-west it abuts the residential gardens to the rear of properties on Harris Lane and Anderson Close which themselves are within the village envelope. To the north and north-east the site is bound by mature hedgerow and trees, and lies adjacent to a rural tree nursery and tree surgery/ arboricultural business. To the east the site is bound by low hedgerow but has views towards the open countryside beyond. To the west the site lies opposite an area of public open space.
- 6.37 The site is not a valued landscape under the NPPF paragraph 170 definition. No other landscape designations are applicable to the appeal site. The site is adjacent to the Shenley Conservation Area and therefore the site contributes to its immediate setting.
- 6.38 The ‘Landscape Sensitivity to Residential and Employment Development in Hertsmere’ report (LUC, Sept 2020) provides an assessment of the local landscape and settlement pattern. The appeal site is situated within assessment unit 21c of the High Canons Valleys and Ridges. The site is in an area described as the ‘Shenley Fringe’ and as having a rural character, “predominantly agricultural land with a relatively intact field pattern and some former parkland.” It recognises that the village is situated on a ridge, with the land surrounding the village sloping away. The report found that area 21c is sensitive to built development. It is of moderate to high sensitivity to low density housing (2-2.5 storeys) such as that proposed. This is defined as meaning the landscape and visual characteristics are susceptible to change; they may be able to accommodate development at that scale (2-2.5 storeys) but only in limited situations without adverse change or significant effects. The thresholds for change are low. It should also be noted



that this area is of 'moderate to high sensitivity' to medium density housing (3 storeys) and high sensitivity to flats. The appeal scheme does not include any parameters restricting building heights (only an indicative heights plan at this stage).

- 6.39 In assessing the appeal site as a potential housing allocation, the HELAA (at page 470) considered that prevailing densities around the site were "Very Low" and the area type was described as "rural".

*Shenley Parish Council's Landscape and Visual Impact Assessment*

- 6.40 Shenley Parish Council's landscape witness has concluded that there will be major adverse landscape effects (on the site itself, the small woodland copse to the south-west, and for the historic routeway and hedgerow along Harris Lane and the playing field). On two of the site boundaries, there would be moderate to moderate/major landscape effects. There would be a major adverse effect on the rural setting of the Conservation Area and moderate to major adverse effect on the Landscape Character Area 21C. I give these landscape character impacts significant weight.
- 6.41 The Parish Council's landscape witness has also assessed eight representative viewpoints and compared an assessment of these against the appellant's assessment. The conclusion reached is that there would be major adverse visual effects for a number of viewpoints (Viewpoint 2 Harris Lane looking north; Viewpoint 3 Harris Lane Playing Fields; Viewpoint 6 PRoW Shenley 019; and for close neighbours at 46-52 Harris Lane and Anderson Road (north side)). In addition, there would be moderately adverse visual effects at Viewpoint 1 (Harris Lane looking south); Viewpoint 7 (PRoW 018); and for neighbours living in the northern apartment block at Birchwood.
- 6.42 Overall, the witness concludes there is a significant adverse impact on both landscape character and visual amenity, and I afford this significant weight in the planning balance.

***The proposal's compatibility with existing businesses, with particular regard to potential noise impacts***



- 6.43 Policy CS16 of the Core Strategy seeks to ensure that noise pollution is minimised. Policy SADM20 also seeks to prevent adverse noise impacts to public health or wellbeing. New residential development should not be exposed to existing significant sources of noise pollution, unless it can be shown that mitigation measures would be successful in reducing noise impacts to an acceptable level. More guidance (including noise exposure levels at various times of day by noise source) is provided in Appendix A to the SADM Plan.
- 6.44 Paragraph 185 NPPF requires that development be appropriate to its location, taking account of any likely noise pollution and the effect of this on health and living conditions. Development should mitigate, and reduce to a minimum, potential adverse impacts resulting from noise— and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 6.45 The PPG makes clear the need for mitigation to avoid existing businesses having a significant effect on future occupiers of a development and it is the responsibility of the “agent of change” (the appellant, in this case) to clearly identify the effects of existing business which might cause noise nuisance (or indeed dust/ air quality impacts or vibration) and the likelihood of significant effects. The agent of change needs to consider current activities but also “those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made.” The appellant is also required, as the agent of change, to clearly define the required mitigation to “help mitigate the risk of a statutory nuisance being found if the new development is used as designed (for example, keeping windows closed and using alternative ventilation systems when the noise or other effects are occurring).”<sup>4</sup>
- 6.46 The site is directly adjacent to an existing rural arboriculture business, Gristwood and Toms, which lies to the north. Planning permission was granted in 1997 for a mixed use of the site, for a tree surgeon business and use as a tree nursery. Over time, the business has expanded, as described in the current retrospective planning application (reference

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<sup>4</sup> (Paragraph: 009 Reference ID: 30-009-20190722 Revision date: 22 07 2019)



22/0926/FUL), and includes hardstanding, floodlighting and a cabin for training.

As described in the Planning Statement supporting that application (CDK.3) the scale of the business has grown over the past 25 years, with staffing levels increasing from 10 to 60-70 (including tree surgeons, nursery and planting staff, maintenance and recycling staff, and apprentices). The business has tree management contracts with 30-40 local authorities. The Transport Statement (CDK.4) submitted with the application describes the site's three access points, and indicates that the business generates approximately 281 total vehicle movements a day, with approximately 75% of these using the Harris Lane access. The survey showed there were 39 LGVs, 16 MGVs and 6 HGVs using the Harris Lane access on the day surveyed.

- 6.47 The officer's report addresses potential noise impacts in paragraphs 7.8.7 to 7.8.14. This summarises the concerns raised by Environmental Health regarding noise impacts to future residents both before and after review of the appellant's noise impact assessment. At paragraph 7.8.10 the officer's report notes that:

*"In terms of noise from the Gristwood and Toms site, Environmental Health confirmed that the projected internal noise levels with open windows are likely to cause complaints. The Noise Impact Assessment also suggested that noise levels in outdoor amenity spaces would be 15dB above the background noise level, which is considered to be high and would likely result in noise complaints, limiting the use of gardens."*

- 6.48 As such the officer's report concluded (paragraph 7.8.14) that whilst noise mitigation had been proposed, there is limited detail to suggest it would reduce noise to an acceptable level, and therefore this formed part of the harm in the assessment. The appellant provided additional information clarifying measured noise levels. The Committee report update confirmed that Environmental Health had reviewed the additional information and we content to remove their objection, on the basis that "the masterplan is indicative at the moment and there is scope for good acoustic design, such as not having windows to habitable rooms facing towards the commercial site to the North." As such, noise did not form a reason for refusal, and noise impacts did not factor into the harm in the Green Belt VSC consideration.



- 6.49 Shenley Parish Council has produced noise evidence, which predicts there will be a significant adverse noise impact upon the proposed new dwellings, due to the existing operations at Gristwood and Toms to the north. The difference between background noise levels and those predicted to arise in garden areas, and at ground and first floor façade level, is in excess of 10dB in multiple locations. This prediction takes account of the construction of a 2.4m acoustic barrier at the site boundary (as confirmed at paragraph 7.3 of the statement). As such, there will be harm to the amenity of future occupiers and also a risk to the future of the existing commercial operations (in terms of noise complaints) which has been operational on the site for 30+ years.
- 6.50 It is accepted that the scheme is only submitted in outline at this stage and precise layout will be determined at reserved matters. The noise evidence has considered the two indicative masterplan layouts and concludes there will be significant adverse noise impacts at a number of locations across the site, in both indicative layouts. Figure 3 of the noise proof shows predicted noise contours (page 23), showing noise dispersal across the site with one potential layout. The predicted noise levels even after mitigation in the form of a 2.4m acoustic fence will have a bearing on the layout which can come forward at reserved matters and could, for example, mean that the maximum quantum of development proposed is only deliverable by increasing densities on the portion of the site furthest from this commercial noise source. No maximum building heights parameter plan has been submitted for approval.
- 6.51 As set out above, the PPG requires that the agent of change consider not just the current level of activity from the commercial operations but “those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made” and must clearly define the required mitigation to mitigate the risk of a statutory nuisance.
- 6.52 I therefore conclude that the proposal will cause significant harm due to noise impacts for future occupiers, and this should be given significant weight.

***Conclusion re: Green Belt and Other Harm***

- 6.53 In summary the harm identified includes:





- Green Belt Harm: The proposal is defined as ‘inappropriate development’ in the Green Belt in the NPPF; it fails to preserve the openness of the Green Belt in both spatial and visual terms, and it undermines the aims of Green Belt designation, as it results in encroachment into the countryside. I give this substantial weight.
- Landscape and Visual Effects: Overall there are significant adverse impacts on both landscape character and a visual amenity, which I afford significant weight.
- Noise: the evidence suggests there could be significant noise impacts to future occupants; subject to detailed design of layout at reserved matters stage. I give this factor significant weight. As significant impacts are predicted (despite noise mitigation) at multiple locations across the site, this may have significant bearing on the layout which comes forward (for example, a need to increase densities on the portion of the site furthest from the noise source if delivering the maximum quantum allowed).

**WHETHER VSC EXIST, THE WEIGHT TO BE AFFORDED TO THEM, AND WHETHER THEY COLLECTIVELY OUTWEIGH THE IDENTIFIED HARM**

6.54 The NPPF provides that inappropriate development should not be approved except in ‘VSC’ (para 147), and that ‘VSC’ 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 (para 148). I must therefore turn to a consideration of:

- a) Whether certain factors arise which amount to ‘VSC’;
- b) If so, what weight should be given to those factors; and
- c) Whether those VSC, viewed collectively, outweigh the harm to the GB and the other harm identified above.



6.55 The Appellant contends that VSC exist to outweigh the potential harm to the Green Belt which may result from the proposed development. The matters which they suggest amount to VSC here are:

- i. Contribution to housing land supply;
- ii. Affordable housing provision in excess of policy requirements;
- iii. Delivery of housing within the five-year deficit period;
- iv. Acceptance in the emerging local plan that there is a need to plan for development on sites in Green Belt;
- v. Proposed allocation of the site in the draft Regulation 18 version of the emerging Local Plan now set aside;
- vi. Provision of self-build plots;
- vii. The site is in a sustainable location;
- viii. Provision of publicly accessible open space;
- ix. Economic, environmental and social benefits;

6.56 I now turn to a consideration of whether each of the above factors amounts to a VSC for the purposes of this appeal, and if so, the weight I attribute to each factor. I then return to the question of whether, collectively, the set of VSCs outweighs the harm to the Green Belt and other identified harm.

***Contribution to housing land supply***

6.57 The High Court has outlined, in *Phides Estates (Overseas) Limited vs the Secretary of State for Communities and Local Government et al* [2015] EWHC 827 (Admin), the approach to determining the weight to be afforded to a housing land supply shortfall. This confirms there is no prescribed weight to be given to a proposal's ability to reduce a housing supply shortfall, and this is a matter for the decision maker. The weight given to housing supply "will vary from case to case. It will depend, for example, on the extent



of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet”.

- 6.58 In this case, the I agree that the proposal delivers a benefit via the contribution made to housing land supply; this includes delivery of 37 dwellings overall, including 19 market units, 15 affordable housing units (40%) and 3 self build units. The LPA has a significant shortfall in housing land supply (2.25 years) and work towards identification of suitable housing allocations continues, within the confines of significant constraints posed by Green Belt designation across a large proportion of the district.
- 6.59 The Ministerial statement (2015) which indicates that unmet housing need is not in itself likely to constitute VSC is a material consideration of limited weight.
- 6.60 The officer’s report afforded the market housing alone ‘moderate weight’, but when factoring in the affordable housing and self build, overall, they considered the contribution to housing supply to carry ‘significant weight’.
- 6.61 I agree with the officer’s assessment that overall, the contribution to housing land supply is a benefit of the scheme which attracts significant weight.
- 6.62 Elsewhere in this same LPA area, Hertsmere, ‘significant weight’ was attached to the contribution to housing supply made by a similar sized scheme (30 dwellings including 7 affordable units) (Sunnybank Junior and Infant School (APP/N1920/W/19/3229315 issued 18 Nov 2019). As is the case here, the proposal was inappropriate development, causing substantial harm to the openness of the Green Belt. The appeal was dismissed at appeal, finding VSCs did not outweigh the Green Belt Harm.
- 6.63 I am aware there are other appeal decisions issued recently, in other LPA areas, where “very substantial weight” has been given to the contribution made to housing land supply. These are summarised below.
- Land between Lodge Lane and Burtons Lane, Little Chalfont, Amersham HP4 4AJ (APP/X0415/W/22/3303868, issued 8 March 2023) – paragraph 128-131: very substantial weight given to the provision of 215 market dwellings and 152



affordable dwellings in Buckinghamshire Council's area. The context included persistent under supply over a decade (amounting to a need for 104 dwellings per year) and median house prices higher than for the rest of Buckinghamshire (and rents higher than the rest of the south-east). There was 2.5 years' supply, declining to 1.81 in the current year and collectively, VSC were found to exist. The current local plan/ development strategy dated back to the Saved Policies of the Chiltern District Local Plan (1997) including Adopted Alterations 2001 and the Core Strategy for Chiltern District (2011), all of which pre-date the introduction of the NPPF in 2012.

- Land at Great North Road, Stanborough, Welwyn Garden City AL8 7TQ (APP/C1950/W/22/3300873 issued 29 November 2023) – paragraph 34: very substantial positive weight to the benefit that 9 dwellings would make to housing land supply in Welwyn Hatfield Council's area. There was 2.58 years' supply, which was a 'considerable and significant shortfall' yet collectively, the VSC were not enough to outweigh the Green Belt and other harm. The Inspector noted the 2021 decision at Bullens Green Lane, Conley Heath was not directly comparable as it involved a proposal spread across two LPA areas (Welwyn Hatfield and St Albans) (para 29) and also delivered self build and affordable housing to address an acute need. The Inspector also considered the 2021 Codicote decision, noting it involved benefits in the form of affordable housing and school expansion.
- Roundhouse Farm, Land off Bullens Green Lane, Colney Heath (APP/B1930/W/20/3265925 issued 14 June 2021) : very substantial weight given to the benefit of up to 100 dwellings (including 45% affordable and 10% self build) to housing supply in two LPA areas, Welwyn Hatfield and St Albans. At best, housing supply was 2.58 years in Welwyn Hatfield and 2.4 in St Albans. The Inspector did not consider there would be any marked improvement on this in either LPA area in the short to medium term, which contributed to the 'very substantial' weighting. The St Albans plan dated to 1994 (saved in 2000) and the Welwyn Hatfield Plan to 2005. As such, neither LPA had updated adopted an updated strategy since the introduction of the NPPF in 2012.



- Land south of Heath Lane, Codicote SG4 8YL (APP/X1925/W/21/3273701 issued 14 June 2021) (paragraph 106): very substantial weight to the contribution made to housing supply by 167 dwellings in North Hertfordshire DC's area. The circumstances included a 1.47 year supply (which had deteriorated from 2.2 in the time between determination of the application and the appeal), and a maximum wait of nearly 5 years' wait for a 2-bed affordable flat. The Inspector noted (para 105) that "the circumstances of this application are quite extreme" with no recent local provision of affordable housing and a "critically inadequate and deteriorating" housing supply. The emerging Local Plan was at an advanced stage at the time of determination; the current adopted plan dated back to the 1996 Local Plan (saved policies; 2007) so pre-dated the introduction of the NPPF in 2012.

6.64 There are also other examples where contribution to housing land supply shortfall has been given less weight than these recent cases. For example, APP/C1950/W/20/3253559 (issued 28 November 2022) which related to a proposal for 31 dwellings at Northaw House, Coopers Lane, Potters Bar EN6 4NG (in Welwyn-Hatfield's administrative area), which was an uplift of 6 dwellings compared with an already connected scheme. The Inspector considered the 31 dwelling total offered a 'moderate benefit' but the limited uplift of 6 dwellings was only of 'minor benefit' locally, in terms of contribution to housing supply (para 128). It was said that limited comparison could be made with larger schemes of 100 dwellings/ 45 affordable housing dwellings (para 125) noting that these are "not comparable in terms of contribution to housing supply" despite the Council's "poor record of allocating housing land."

6.65 My conclusion that significant weight (as opposed to 'very substantial') should be afforded to the contribution to housing land supply is based upon the limited scale of the proposal (as compared with the larger scale of 3 of the 4 cases above) and the fact that Hertsmere has updated its strategy more recently than these other examples. Hertsmere's Core Strategy was adopted in 2013, the Elstree Way Corridor Area Action Plan in 2015 and the Site Allocations Plan (SADM) was adopted in November 2016. Land in Shenley was released from the Green Belt via Policy SADM22 of the SADM 2016



(reflecting development which had already previously occurred, in the form of 900 new homes on the former Shenley Hospital site) but no decision was taken at that time to release other Green Belt sites around Shenley. Therefore, exceptional circumstances for Green Belt release of this site have not been made out as part of any plan making process. The SADM was found sound following examination by an independent inspector in 2016. Paragraph 2.4 of the same confirms that the supply was, at that time, considered more than sufficient to meet the Core Strategy housing target which itself was found to be sound in 2013. The information on the Council's website indicates that:

*“A meeting of our full Council in April 2022 considered options in relation to the Local Plan following the public engagement carried out in 2021. It was agreed to set aside the current Regulation 18 draft Local Plan, but continue the local plan process by completing consideration of the Regulation 18 engagement responses and carrying out additional work as necessary to inform a local plan spatial strategy, whilst awaiting clarity from the Government on changes to law or policy affecting that matter.”*

6.66 Whilst the emerging plan has been withdrawn, a significant amount of work has been carried out in developing the evidence base to inform a strategy, and the Council indicates it is continuing to move forward with work to inform an alternative strategy. The Government clarity on potential changes, mentioned above, is expected imminently. So, in the medium term, at least, I anticipate an alternative strategy will come forward.

#### ***Affordable housing provision in excess of policy requirements***

6.67 Policy CS4 of the Core Strategy seeks provision of 35% affordable housing. A policy complaint contribution for this scheme would equate to 13 dwellings. The appellant has, however, proposed 40% provision, equating to 15 dwellings.

6.68 As set out above, there is a benefit of significant weight which arises from the contribution made to housing land supply – which includes not just market housing but also the affordable housing which would be delivered.



6.69 The question, therefore, is whether the two additional affordable housing units (over and above the 13 which would be required of a policy compliant scheme) is a VSC which further justifies inappropriate development in the Green Belt, and if so, the weight that should be attributed to this.

6.70 A number of other recent development proposals have proposed 40% affordable housing as part of large development proposals in this same LPA area. This demonstrates that other developers consider this level of provision to be viable and deliverable. The appellant's proposal to deliver 40% affordable housing in the appeal scheme, as opposed to 35%, delivers a very limited additional contribution to affordable housing stocks (2 dwellings), which should be afforded moderate weight.

LPA Ref	Site Address	Proposal	Status	AH Provision
22/1071/OUT	Land East Of Little Bushey Lane And North Of The Squirrels Little Bushey Lane Bushey Hertfordshire.	Application for residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works. (Outline Application with Appearance, Landscaping,	Appealed for non-determination.	40% AH



		Layout and Scale Reserved).		
23/0053/OUT	Land Lying To The East Of Hartfield Avenue And Fronting Onto Barnet Lane Elstree Hertfordshire	Residential development of up to 76 dwellings, with associated landscaping, amenity space, Self-Build plots, sustainable urban drainage (SuDs), and associated works. (Outline Application to include Access, with all other matters Reserved)	Pending determination	45%
22/1539/OUT	Land South Of Shenley Hill Radlett	Erection of up to 195 new homes (40% 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,	Refused 2 March 2023 (GB, heritage and Drainage)	40%





		LANDSCAPING, LAYOUT and SCALE).		
21/2446/FUL	Wyevale Garden Centre Dancers Hill Road Bentley Heath Barnet	Demolition of existing buildings and erection of 16 dwellings including 6 affordable dwellings, together with associated parking, amenity space, landscaping and access from Dancers Hill Road (additional plan and documents received on 11/03/2022, additional document and plan received on 10/06/2022 and amended plans received on 30/05/2022 and 14/06/2022).	Approved July 2022. Submitted details required by condition in July 2022 (22/1299/DOC) and December (22/2125/DOC) and have since submitted a non-material amendment to allow turning bay for fire vehicles (23/0262/MA).	37.5%
17/2081/FUL	Land East Of Rossway Drive And Adjacent To The Lodge Rossway Drive Bushey	Demolition of existing buildings and construction of new buildings comprising 32 houses (11 x two bedrooms and 21	Approved.	100%



		<p>x three bedrooms) and 23 flats (5 x one bedrooms and 18 x two bedrooms) with associated new access road, landscaping, parking, pedestrian access and public open space. New residential units will be 100% affordable housing</p>		
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6.71 The evidence prepared in connection with the emerging Local Plan (now set aside) remains valid and relevant to the question of local need for affordable housing. The South West Hertfordshire Local Housing Needs Assessment’ on behalf of Dacorum, Hertsmere, St Albans, Three Rivers and Watford Councils (GL Hearn, Sept 2020). establishes that there is a clear need for more affordable housing in this LPA area. Its recommendation was: “Such is the scale of affordable housing need that the local authorities should seek to deliver as much affordable housing to rent as viability allows.” And in terms of affordable homes for ownership, the recommendation was to seek “10% but no more of all housing (on larger sites) to be affordable home ownership (as set out in NPP2).”

6.72 Therefore, it is a reasonable assumption that when a new strategy is developed and brought forward, developers will be expected to contribute to affordable housing, including housing for rent and ownership. Emerging Policy CS4 (now of no weight) sought 40% affordable housing in the highest value postcodes and at least 35% in all other locations. It is not considered that the appeal’s schemes 40% provision, delivering 2 dwellings over and above the 35% policy requirement, is of any more than moderate



weight, given the very limited contribution made (2 dwellings). Significant weight has already been given to the delivery of policy compliant affordable housing overall (13 units), as part of the contribution to housing need of all types.

***Delivery of housing within the five-year deficit period***

- 6.73 The appellant's case is that the proposal could be delivered within the five year deficit period, and that this is a VSC. This involves consideration of housing delivery, as opposed to supply. The benefits of contribution to housing supply have been considered above, and afforded significant weight.
- 6.74 As noted by the case officer in the officer's report (CDB.1), "the Council has delivered more than 75% of its housing over the previous three years, and as such the delivery of the proposed housing within the five-year deficit period carries limited additional weight."
- 6.75 The Housing Delivery Test (14 January 2022) shows the Council delivered 1618 dwellings over the previous three years (88%). We endorse the Council's stated position on Housing Delivery and reserve the right to reconsider the weight to be afforded to housing delivery should there be a material change to that stated above.
- 6.76 Given the appeal scheme has been submitted in outline, it is still necessary to develop the detailed design, (including layouts which work with the high baseline noise environment), submit a reserved matters application, and discharge any pre-commencement conditions following the grant of reserved matters consent. Preliminary engineering and ecological work is required, including the construction of drainage infrastructure/ attenuation, connection to services and utilities (as it is a greenfield site), and also creation of the biodiversity net gain proposals (which includes construction of wildlife ponds). These factors may impact the timing of new housing coming forward. Paragraph 2.2 of the officer's report suggests there are two electricity pylons within the site, one to the rear of no. 46 Harris Lane and one towards the south-eastern corner of the site on the side boundary. There may therefore be programme implications associated with suitable design (to ensure adequate safe clearance), and



consultation with the statutory undertaker with respect to ground levels, road layout, landscaping and any street lighting and future maintenance arrangements.

- 6.77 On this basis, it is agreed that delivery of housing within the 5 year deficit period attracts limited weight. Housing is unlikely to come forward for occupation for at least 2 of those 5 years.

***Acceptance in the emerging local plan that there is a need to plan for development on sites in Green Belt***

- 6.78 The HELAA concluded that in the existing policy context (that is, without any additional Green Belt release) there was a potential residential yield of 2,429 units (for five years beginning 1 April 2019) and total supply (including permissioned sites, prior notifications, windfall etc) was 3,770. That housing supply would increase to 17,956 units in a policy context of Green Belt release. As such, it is accepted that Green Belt release was a significant source of housing supply in the draft spatial strategy of the 2018 regulation 18 Local Plan.
- 6.79 Yet that spatial strategy has been set aside. As such, no weight should be given to that strategy, nor any acceptance in that strategy of the need for release of Green Belt sites such as this, which are not previously developed.
- 6.80 Given that almost 80% of the borough is covered by Green Belt designation, the HELAA report (at para 4.10) noted there may be 'exceptional circumstances to justify Green Belt release, to accommodate growth'. This would, however, depend on the nature and extent of harm to specific parts of the Green Belt. A strategic approach would be taken – that is, looking at the borough as a whole – to minimise the extent of harm to the Green Belt overall and seek to ensure its purpose was maintained. Therefore, we cannot second guess what strategy might come forward. It could, for example, involve greater prioritisation of brownfield/ PDL in settlements or in countryside Green Belt locations. Paragraph 1.7 of the HELAA noted that Shenley village, for example, has a modest stock of PDL land which could contribute to housing stock. Alternatively, it might mean



allocating Green Belt sites which are considered to play little appreciable role in the purpose of Green Belt designation.

- 6.81 It is for the LPA to now determine an alternative strategy, moving forward, for delivery of the assessed level of housing need. This may or may not include release of Green Belt land. Until such strategy has been developed, no weight can be afforded to the previous strategy of the now set aside Regulation 18 Local Plan.
- 6.82 It should be noted that the reason the Regulation 18 Local Plan was set aside is directly relevant to the issue of Green Belt release upon which this appeal turns. The agenda report noted there had been nearly 18,000 consultation responses in a borough with fewer than 45,000 households, and the “vast majority of the responses expressed objection to ... the need to develop on the existing Green Belt in order to accommodate such growth over the next 15 years.” The report also noted that “Government ministers and reports in the planning press have indicated that ministers are considering changing the planning system and planning policy. Any such changes may well affect spatial strategy matters such as the calculation of housing need, housing land targets and constraints such as Green Belt policy.”<sup>5</sup>
- 6.83 The Government has signalled its intention to amend the NPPF by the end of April 2023 and the ministerial statement to this effect (6 December 2022) is a material consideration of limited weight. The consultation explains the Government proposes “to make clear that local planning authorities are not required to review and alter Green Belt boundaries if this would be the only way of meeting need in full” and that “the purpose of these changes is to provide more certainty that authorities can propose a plan with a housing requirement that is below their local housing need figure, so long as proposals are evidenced, the plan makes appropriate and effective use of land, and where all other reasonable options to meet housing need have been considered.” The test for examination of the new strategy and plan would also be altered: “we propose to simplify and amend the tests of ‘soundness’ through which plans are examined, so

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<sup>5</sup> Paragraph 2.3 of Agenda and Reports Pack for Full Council meeting on 27 April 2022 where decision was taken to set aside the Regulation 18 Local Plan



that they are no longer required to be ‘justified’. Instead, the examination would assess whether the local planning authority’s proposed target meets need so far as possible, takes into account other policies in the Framework, and will be effective and deliverable.”<sup>6</sup>

6.84 Therefore, no weight should be given to the previous strategy to release Green Belt land in the now set aside plan. Limited weight should be applied to the possibility of imminent changes to the NPPF and process for plan making, such that a Green Belt release to meet local housing need in this LPA area is not an inevitable conclusion.

***Proposed allocation of the site in the draft Regulation 18 Local Plan***

6.85 The Regulation 18 Local Plan has been set aside. As such, no weight should be given to the proposed allocation of the appeal site for up to 50 dwellings.

6.86 The HELAA Site assessment itself (for site HEL390) notes that conclusions regarding its suitability were predicated upon a strategy of Green Belt release, which would require demonstration of exceptional circumstances. It states that “under the current policy framework the site would not be suitable for development other than for rural exceptions scale and type of housing. Were exceptional circumstances to exist which could justify amending the Green Belt boundary in this location in line with paragraph 136 of the NPPF, the site is considered to be suitable, achievable and deliverable for an estimated 50\* homes. However, currently the site can only be recorded in the category of sites as not currently acceptable.”

6.87 This makes clear that the appeal site was only shortlisted for allocation as part of a Green Belt release strategy – a strategy which has been set aside. The “exceptional circumstances” required for amending Green Belt boundaries as part of a spatial plan making exercise were not yet made out, nor tested - given the plan did not progress past regulation 18 consultation stage.

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<sup>6</sup> <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy#chapter-4--planning-for-housing>



6.88 A number of other sites in Shenley were also considered in the HELAA (as set out in Appendix 14, page 439 of the HELAA) and summarised in the table below. Some of these sites make an important contribution not Green Belt purposes with others less so (such as HEL 196, HEL348, HEL349 and HEL508). Some of these could accommodate a larger quantum of development than the appeal scheme (eg HEL196 has capacity for 49 dwellings; HEL348 for 121 and HEL 349 for 263. HEL 349 is also partly PDL (and therefore, could bring forward a scheme which is not ‘inappropriate development’). Therefore, there are potentially other options for accommodating growth in Shenley village, as well as in other Green Belt sites in the borough. The strategy will need to consider which Green Belt sites could be released with the least impact on its wider strategic function and purpose.

6.89 The fact that the appeal site was proposed for allocation is therefore of no weight, given a number of sites were considered in Shenley, and there are others which may equally be considered for release, if indeed release is determined to be the appropriate strategy for addressing housing need.

HELAA Ref	Site Address, Brief Description	Scale/ Density	Green Belt purposes
<i>HEL174a-c, HEL350a-e, HEL389a-b HEL350x and HEL350y</i>	Land to the east, south and south west of Harperbury Hospital 39ha, former hospital site in open countryside part of the Green Belt.	652 units (at 30dph)	Site makes an important contribution to the Green Belt (meets purpose moderately) – essential gap between Shenley and Radlett
HEL196	Land adj Wilton End cottage. 1.48ha on edge of village.	49 (at 39dph)	Part of site meets Green Belt criteria strongly, but part less so. Consider for potential allocation.
HEL236a and HEL236b	Rectory Farm. Edge of village.	366 (at 34.5 dph)	Strongly meets Green Belt criteria and makes an important contribution. If circumstances exist for Green Belt release, site could



			be considered suitable achievable and deliverable for 75 homes in first 5 years and 291 homes beyond this.
HEL348	Shenley Grange (north).	121 at 37.5dph	Part makes a strong contribution to Green Belt purposes, part less so. Was proposed for allocation in Reg 18 plan.
HEL349	Shenley Grange (South) – PDL in the Green Belt.	263 (at 45 dph)	PDL site in the Green Belt. Part makes strong contribution to Green Belt purposes, other part less so. Was proposed for allocation in Reg 18 plan
HEL354	Land north of Fox Hollows.	76 at 31 dph	In isolated part of Green Belt. Plays important role in maintaining separation between Colney and Shenley.
HEL360	Land south of Radlett Lane.	231 at 34.5 dph	Meets Green Belt purpose strongly and makes an important contribution.
HEL370	Land west of Shenley	207 at 34.5 dph	Meets Green Belt purpose strongly and makes an important contribution.
HEL508	26 Woodhall Lane,	24 (at 37.5 dph)	Little risk of coalescence, but does display openness.
HEL 515	Land south of Rectory Farm.	138 at 34.5	Prevents outward sprawl of Borehamwood so makes an important contribution.

6.90 I therefore give no weight to the proposed allocation of the appeal site for up to 50 dwellings.





### ***Provision of self-build plots***

- 6.91 The Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) places a legal duty on local authorities to maintain a register of individuals and groups who want to acquire serviced plots of land. Section 10 of the Housing and Planning Act 2016 places a duty on local authorities to grant planning permission to meet the demand for Self and Custom Build Housing in each Base Period within the three years after the end of the Base Period.
- 6.92 This relatively recent requirement is reflected in the NPPF, which now requires that planning policies are based on an assessment of housing need of different groups in the community including “people wishing to commission or build their own homes.” (para 62 NPPF). As stated in paragraph 28 of the same, self and custom build homes could provide either market or affordable housing.
- 6.93 Hertsmere BC do not have any policies as yet for the delivery of self and custom build housing.
- 6.94 The latest Right to Build data release published by the Government (DCXX) shows that whilst demand in Hertsmere is not yet fully being met via the grant of permission for serviced plots, there has been an improvement in recent years in the LPA’s performance in this regard, with over half of the demand from individuals having been met in the for each of the past three years. A comparison of performance over time is as follows:

<b>Period</b>	<b>No. entries on the register in total</b>	<b>No. permissions for serviced plots granted</b>	<b>Percentage</b>
2016-17	15 individuals; 1 group	0	0%
2017-18	12 individuals; 1 group	0	0%



2018-19	43 individuals; 3 groups	25	58% of individual demand
2019-20	52 individuals; 5 groups	29	55% of individual demand
2020-21	69 individuals and 6 groups	36	52% of individual demand

6.95 The appeal scheme proposes 3 self build plots, which makes a limited contribution to demand. It would take the 52% delivery of individual demand up to 56%. Whilst it is accepted that delivery of self build to address local demand for the same (as evidenced in the register) can amount to a VSC the scale of delivery here, as against the backdrop of current delivery, is limited. The Council does not have a policy for self and custom build delivery, yet there is clearly market demand for the same as a number of other large scale applications incorporate an element of self build, in greater numbers than this appeal scheme. For example, application reference 22/1071/OUT (Land East Of Little Bushey Lane And North Of The Squirrels Little Bushey Lane Bushey Hertfordshire) proposed up to 310 units, including 5% self build plots. This would amount to 15.5 plots. That application has been appealed for non-determination; appeal pending. Application reference 23/0053/OUT (Land Lying To The East Of Hartfield Avenue And Fronting Onto Barnet Lane Elstree) proposes 5% self build plots as part of a scheme of up to 76 dwellings (3.8 presumably rounded to 4). That application is pending determination.

6.96 The case officer afforded moderate weight to the provision of three self build plots in the context of an absence of any policy, and under delivery of the same (para 7.14.8 of officer's report). I agree with that assessment.

***The site is in a sustainable location***

6.97 The appellant suggests that the site's sustainable location is a VSC justifying inappropriate development in the Green Belt. Whilst it is agreed that the appeal site has



access to local services and facilities in the village, and is not isolated within the Braintree definition), it is nonetheless still in a rural village which relies upon access to larger settlements for employment and other services.

6.98 The appeal site was ranked 3 out of 10 and scored “low” for accessibility in the Settlement Hierarchy (see Appendix 3). Shenley village scored lower on accessibility than other settlements in the borough, such as Bushey, Radlett, Borehamwood, Potters Bar. Shenley is classified as a ‘key village’ as opposed to a ‘key settlement’. The existing status, prior to update of the Settlement Hierarchy, was:

*“small rural village within the GB, which remains largely residential in character and land use, relying on larger settlements nearby for employment and local services.”*

6.99 The Settlement Hierarchy report updates this to ‘Tier IV – Key Village:

*“a rural village with a distinctive centre that has grown substantially in the last 20 years with the development of the former Shenley Hospital. Largely residential in character with a limited range of local shops and local services and limited opportunity for infill development.”*

6.100 Therefore, whilst it is accepted that the site is in proximity to the services and facilities of Shenley village (and is not ‘isolated’ within the Braintree definition), it is nonetheless still a rural where there is some reliance on larger settlements for employment and other services. The case officer noted there was limited access to public transport (paragraph 7.14.9) and considered overall there was “relatively good accessibility” but this carried limited weight in the VSC argument.

6.101 It should also be noted that the primary school in Shenley does not physically have the space to expand to meet any additional demand. It is therefore possible that future occupants may need to travel further afield for their educational needs, despite the presence of a primary school in the village<sup>7</sup>.

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<sup>7</sup> Source: Chapter 5 of Regulation 18 Local Plan: Individual Place Strategies – Shenley’ “Key issues and Challenges...No scope to physically expand the primary school thereby constraining the amount of growth in the village.”



6.102 Based on the above, whilst I accept the site's proximity to the services of this rural village is a material consideration, I do not consider adds any more than limited weight to the collection of VSC.

***Provision of publicly accessible open space***

6.103 The appellant suggests that the provision of publicly accessible open space is a benefit of the scheme and a VSC contributing to the justification for inappropriate development in the Green Belt.

6.104 The site is directly opposite a large area of public open space/ park. By contrast, the illustrative site layout plan shows a marginal area of landscaping space which could come forward at reserved matters for public open space. Given the dense residential development and roads which would surround this (and the high quality open space across Harris Lane) it is questionable whether any public open space on the appeal site would be utilised by the general public, as opposed to occupants of the scheme itself. It is therefore anticipated to be of limited public benefit.

6.105 The Open Space Assessment Report 2019 and associated Standard Paper analysed current open space provision and future requirements for the same based on population distribution (and growth planned as that time). It found there were 175 open space sites, equating to over 315 hectares of land across the borough. Nearly 2/3 of these rated above the quality threshold. Over 109 hectares of land is classified as parks and gardens in the borough including 10.34ha in Aldenham and Shenley. Overall, there is a provision of 1.05ha per 1,000 head of population. The guideline standard is 0.8 ha per 1,000 head of population (Fields in Trust). All of the parks and gardens in the borough were stated to be above the threshold for quality and well maintained attractive sites. All are of high value.

6.106 On this basis, the possible provision of a small area of open space within a housing site, in close proximity to an existing area of public open space with equipped play space, is of limited weight as a VSCs. If it were the case that there was significant deficiency in quantum or quality, or indeed in provision in this local area, this may attract more weight but that does not appear to be the case here.



### ***Economic, social and environmental benefits***

6.107 The appellant suggests there are economic, social and environmental benefits to the proposal which are VSCs which contribute to the justification for inappropriate development in the Green Belt.

6.108 Economic benefits are likely limited to employment during the construction phase, and local spending in shops and services. This is no more than would be the case for any other housing development which comes forward, and therefore is of no more than limited weight in the consideration of VSC justifying inappropriate development.

6.109 Environmental benefits are also limited; Some limited weight could be given, as a material consideration, to the biodiversity net gain (BNG) which can be achieved. However, the BNG proposal relies entirely on off-site provision, on a separate site some 4.9km north-west of the appeal site, in St Albans' administrative area rather than Hertsmere. The 1.07ha parcel of grassland formed part of a wider site which benefits from planning permission for delivery of up to 129 dwellings (St Albans Reference 5/2014/3250) granted on appeal. The BNG offset site was included in the red line boundary for the outline planning application but did not form part of the landscape proposals which came forward for approval at reserved matters stage, instead leaving this portion of the site unlandscaped. Appendix A to my proof contains the landscape plan submitted and approved in the Reserved Matters application 5/2018/2385. The BNG offset site lies adjacent to the extensive ornamental gardens to be delivered to support the new dwellings to the north. As set out in paragraph 5.42 of the appellant's ecological impact assessment, the BNG proposal is to increase species diversity to achieve 'good condition' of the grassland, create two wildlife ponds, plant 30 trees and enhance the hedgerow by infilling gaps. I accept these enhancements are a material consideration and a benefit of the scheme but do not consider they contribute to the VSC argument. On the appeal site itself, there is a -68.25% reduction in habitat units. At a local scale, therefore, and in this LPA's administrative area, there will be a reduction in habitat and biodiversity. I therefore do not give the BNG proposals any weight as a VSC justifying inappropriate development of this open Green Belt site.



6.110 Social benefits are likely to include use of public open space (subject to the comments above), and contribution to housing supply/ affordable housing, both of which have been afforded appropriate weight above. It is also to be noted that there is some doubt whether the local school can physically expand to accommodate additional demand, so the additional population could indeed have a negative impact on capacity at the local school.

6.111 The appeal site was assessed in the Sustainability Appraisals (potential site allocation HEL390). In summary there was likely to be:

- minor negative effect (with uncertainty) on historic environment (east of Conservation Area and close to listed and non-listed buildings),
- minor negative on greenhouses gases (despite access to bus stops)
- minor negative effect on biodiversity as a result of development of undeveloped greenfield site.
- In terms of economy, the distance to key employment areas could range from significant negative to minor positive
- minor negative effect on soil/ minerals as Grade 3 agricultural land.
- minor negative in terms of access to services, as scored 'low' for accessibility.
- Also scores ok for education, but not clear if school can expand to meet additional demand.

6.112 Therefore, I do not consider that there are economic, environmental or social benefits of the proposal which contribute any more than limited weight to the collection of VSCs which are advanced to justify inappropriate development in the Green Belt.

***Conclusion re: VSCs***



6.113 I have outlined above my views on the benefits of the scheme and whether these amount to VSCs.

6.114 In summary I have identified the following harm to the GB and other harm arising from the proposal:

- The proposal is defined as ‘inappropriate development’ as it involves construction of new buildings in the Green Belt and is not covered by any of the exceptions set out in paragraphs 149 and 150 of the NPPF. The NPPF directs that this must be given **substantial weight**.
- Harm to the openness of the Green Belt, which the NPPF directs must be given **substantial weight**.
- Harm to the purposes of Green Belt designation, in particular, causing encroachment into the countryside. The NPPF directs must be given **substantial weight**.
- Harm to the character and appearance of the area. I give this **significant weight**.
- Harm to amenity of future occupiers, due to noise impacts in outdoor amenity space or internal environments with windows open; consequential impacts to an existing rural business (should windows not remain closed) as a result of new noise sensitive receptors in close proximity to its operations. I give this **significant weight**.

6.115 I have identified the following VSC:

- Contribution to housing land supply. Given there is a significant shortfall in housing supply overall – 2.25 years - I give the supply of market, affordable and self build housing **significant weight**.
- Affordable Housing in excess of policy requirements. I give this **moderate weight** given the limited contribution made (2 AH units).



- Fast delivery of housing within the five-year deficit period. I give this **limited weight** given the appeal scheme is submitted in outline so it would take at least 2 years to come forward for occupation.
- Provision of 3 self-build plots: **moderate weight**
- Development in a sustainable location: **limited weight**
- Provision of publicly accessible open space: **limited weight**
- Economic, environmental and social benefits: **limited weight**

6.116 The following matters were raised by the appellant, but I do not consider they contribute to the package of VSCs being considered:

- Acceptance in the emerging local plan that there is a need to plan for development on sites in Green Belt. I give this **no weight**.
- Proposed allocation of the site in the draft Regulation 18 version of the emerging Local Plan now set aside. I give this **no weight**.

6.117 I do not consider that the identified VSCs outweigh the substantial harm to the Green Belt which has been identified. In addition, harm has been identified in terms of impact on character and appearance, and noise impacts to future occupiers which could constrain the operations of on an existing commercial business. I do not consider that the identified VSCs outweigh the Green Belt, and other harm to character, appearance and amenity which has been identified.





## 7 PLANNING BALANCE

- 7.1 To conclude this part of my evidence, I return to the starting point of S38(6) of the Planning and Compulsory Purchase Act 2004 which demands that planning applications are determined in accordance with the development plan unless material considerations dictate otherwise. As policy for the supply of housing is out of date for the purposes of paragraph 11(d) of the NPPF, (due to a shortfall in supply) the NPPF is the main material consideration.
- 7.2 Paragraph 11 sets out the required approach when the most important policies for determining the application are out of date. Firstly, it requires consideration of whether any policies in the NPPF which protect areas or assets of particular importance provide a clear reason for refusing the development (NPPF paragraph 11(d)(i)).
- 7.3 Substantial harm to the Green Belt has been identified. In addition, significant harm to character and appearance and significant harm to future occupiers/ risk of statutory nuisance complaints due to noise impacts to which I give significant weight.
- 7.4 The VSC arising have been identified and assessed, but these do not, collectively, outweigh the substantial harm which has been identified. There is, therefore, a clear reason for refusal for the purposes of para 11(d)(i).
- 7.5 Para 11(d)(i) is not passed. The appeal should be dismissed.

**REFER TO BLOCK PLAN  
I248-PL-006**

Re-furbish ornamental beds in existing formal sunken garden.

New extended (as approved) paving. Re-use stone from existing pathway on North West side of house.

Retain existing stone paving to area around Hanstead House & replace / reset damaged stone.

Proposed new parking area.

Wooden benches to curved paving to be replaced.

Existing formal terraces to be restored.

Landscaped paved area retained, cleaned & repaired as necessary.

Existing pergola to be retained, cleaned & repaired as necessary.

Rose Garden Pavilion. Structure retained, paving cleaned & repaired.

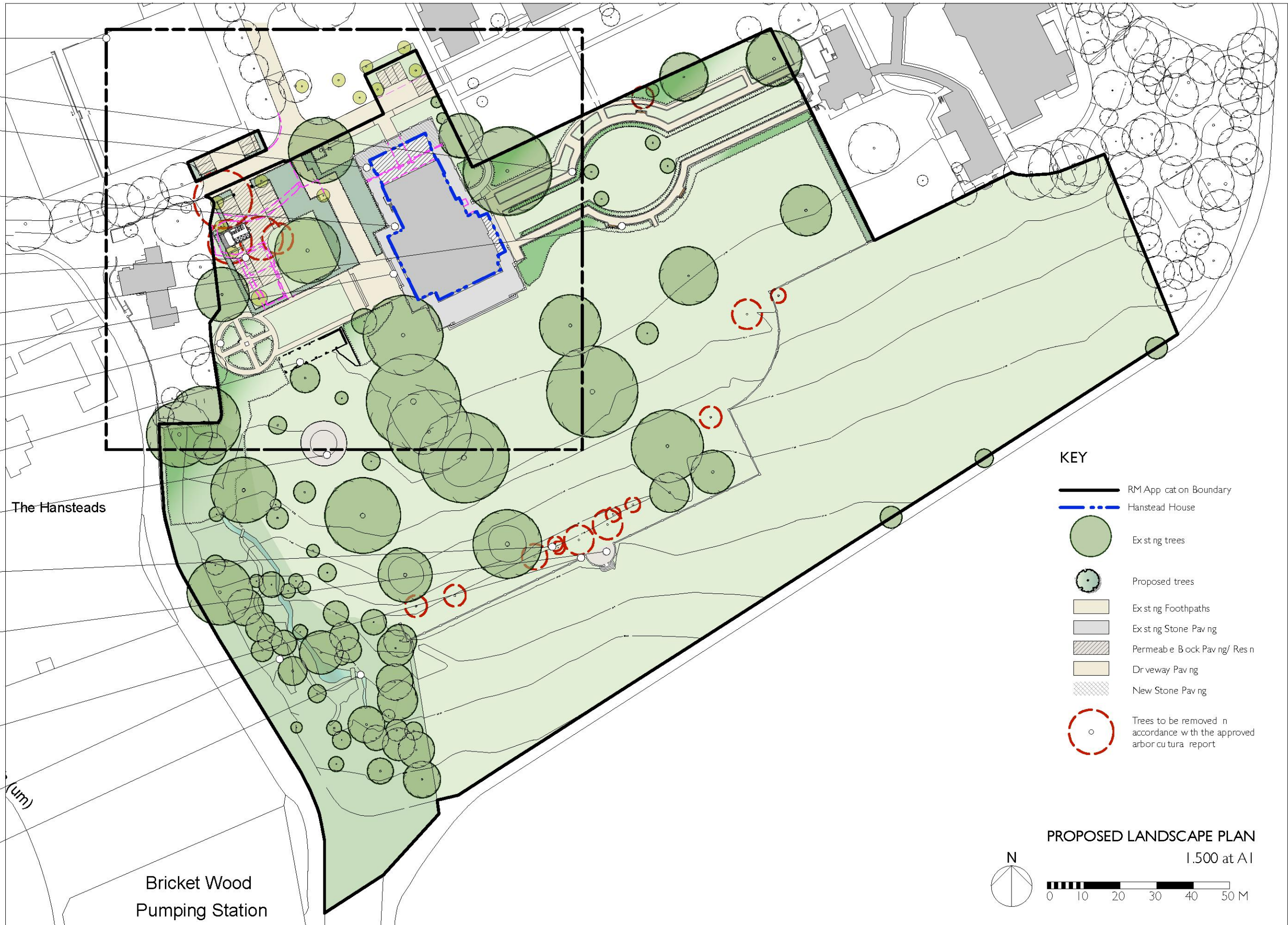
Long distant views restored with the removal of several Cypress trees.

New Permeable Paving in existing bottle balustrade semi-circle.

Replace missing section of bottle balustrade to match adjacent existing balustrade.

Retain and manage Japanese woodland garden.

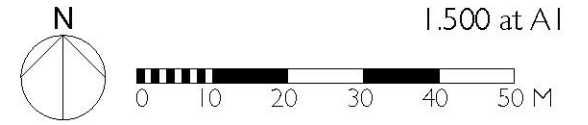
Repair oriental footbridge.



- KEY**
- RM App cat on Boundary
  - Hanstead House
  - Existing trees
  - Proposed trees
  - Existing Foothpaths
  - Existing Stone Paving
  - Permeable Block Paving/ Resin
  - Driveway Paving
  - New Stone Paving
  - Trees to be removed in accordance with the approved arboriculture report

**PROPOSED LANDSCAPE PLAN**

1:500 at A1



Bricket Wood Pumping Station

15 HOOPERS YARD  
LONDON  
NW6 7EJ  
t : 020 7328 2576  
f : 020 7624 7811  
Ema : info@hubarchitects.co.uk

All dimensions are to be checked on site before commencement of works.  
All sizes and dimensions to any structural elements are indicative only. See structural engineer's drawings for actual sizes/dimensions.  
Sizes of and dimensions to any services elements are indicative only. See service engineer's drawings for actual sizes/dimensions.  
This drawing to be read in conjunction with a relevant Architect's drawings, specifications and other consultants' information.

Rev.	Date	Description
#	13/08/18	ISSUED FOR COMMENT
A	24/08/18	ISSUED FOR COMMENT
B	18/12/18	ISSUED FOR COMMENT
C	24/01/19	REFUSE & CYCLE STORE LOCATION AMENDED

nta.  
JK  
JK  
DP  
DP

**PLANNING**

Project: I261 - Hanstead House	Drawing: Proposed Landscape Plan
Scale: 1:500 at A1, 1:1000 at A3	DWG: I261-PL-002
Date: 02.08.2018	Revision: C

