

Planning and Economic Development

Hertsmere Borough Council
Proof of Evidence – Planning
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APP/N1920/W/23/3314268

April 2023

LPA reference: 22/1071/OUT

Appeal by: Redrow Homes Limited

Site Address: Land at Little Bushey Lane, Bushey, WD23 4SE

Proposal:

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, Layout and Scale Reserved).

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1.0 Introduction, Qualifications & Experience

- 1.1 I hold a Masters degree in Town Planning from London South Bank University (LSBU) following completion of my studies in December 2022. I am preparing to submit for licentiate membership of the RTPI as part of my degree apprenticeship with Hertsmere Borough Council (HBC/LPA) and LSBU.
- 1.2 I am currently employed by HBC as a Senior Planner in Development Management. I have held this position since January 2023. Prior to this I was employed as a Planning Officer at HBC, though carrying out the duties of a Senior Planner in an acting up role since September 2021. I have worked as a Planner for a total of three years and seven months.
- 1.3 This appeal was submitted on the grounds of non-determination. My evidence is provided in support of the LPA's decision that, had it been empowered to determine the application, it would have resolved to refuse Outline planning permission for the following reasons:

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, these benefits when taken together are insufficient to clearly outweigh the substantial harm to the Green Belt, by virtue of inappropriateness and due to the significant harm to openness that would arise.

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)."

02. The proposed development is considered to result in harm to the character and appearance of the landscape; in particular, due to the visual impact of the development

on existing open views with rural aspect from Little Bushey Lane and nearby Public Rights of Way, including those that cross through the application site (PRoW Bushey 033 and 040). In particular, views through and within the site from PRoW 040 would become enclosed and constrained by built form.

Therefore, the proposed development is considered to be contrary to the NPPF (2021), Policy CS12 of the Hertsmere Core Strategy (2013) and Policy SADM11 of the Site Allocations and Development Management Policies Plan (2016).

03. The proposed development has failed to demonstrate that it would not result in increased flood risk to future occupiers of the development or the surrounding area, and that an appropriate drainage scheme could be achieved. This is contrary to the NPPF (2021), Policy CS16 of the Hertsmere Core Strategy (2013), and Policies SADM14 and SADM15 of the Site Allocations and Development Management Policies Plan (2016).

- 1.4 This Proof of Evidence pertains to Green Belt and planning balance matters and should be read in conjunction with the LPA's Planning Statement of Case (CD D2), as well as the separate evidence of Mr. Radmall which deals with landscape matters. It sets out the relevant policies and material considerations that are most pertinent to this appeal and assesses the appeal scheme against these. A planning balance exercise is undertaken in accordance with Section 70(2) of the Town and Country Planning Act 1990 (as amended).
- 1.5 Where relevant, this Proof will draw upon matters of landscape, including character and appearance, from the evidence of Mr. Radmall. When doing so, specific reference will be made to Mr. Radmall's Proof of Evidence and the landscape Statement of Common Ground. I adopt his conclusions and rely upon them for my own evidence, where relevant. I have also had specific regard to Mr Radmall's conclusions in relation to actual Green Belt harm.
- 1.6 This Proof refers to Flood Risk matters, which are addressed in more detail by Katherine Waters in her own Proof of Evidence. I make reference to her Proof where necessary and I adopt her conclusions.
- 1.7 This Proof will also have regard to matters of housing land supply insofar as this is relevant to the weighting of the scheme's benefits, namely the delivery of market, self-build and affordable housing. However, a detailed breakdown of the Council's supply

is not provided here as the Council has not been made aware how or why its published supply is challenged. The Council reserves the right to submit a rebuttal Proof of Evidence to address any housing land supply matters in further detail.

2.0 Policy Context

The Development Plan

2.1 The policies relevant to this appeal are set out within the LPA's Statement of Case (CD D2). For the avoidance of doubt, the development plan for Hertsmere comprises the following documents:

- Hertsmere Core Strategy (2013) (CD F1)
- Site Allocations and Development Management Policies Plan (2016) (CD F2)

2.2 The policies considered by the Council to be of most relevance to the appeal are:

Core Strategy

- SP1 Creating Sustainable development
- SP2 Presumption in favour of sustainable development
- CS1 The supply of new homes
- CS2 The location of new homes
- CS3 Housing delivery and infrastructure
- CS4 Affordable Housing
- CS12 The Enhancement of the Natural Environment
- CS13 The Green Belt
- CS16 Environmental Impact of development
- CS17 Energy and CO2 reductions

Site Allocations and Development Management Policies Plan

- SADM11 Landscape Character
- SADM13 The Water Environment
- SADM14 Flood Risk
- SADM15 Sustainable Drainage Systems
- SADM16 Watercourses
- SADM22 Green Belt Boundary
- SADM26 Development Standards in the Green Belt

- SADM40 Highway Access Criteria for New Developments

- 2.3 It is agreed between the parties that the Council cannot demonstrate a five year housing land supply and therefore the development plan policies most important to the determination of the appeal may be considered to be out of date. However paragraph 219 of the NPPF sets out that due weight should be given to policies according to their degree of consistency with the NPPF; the closer the development plan policies are to the policies within the NPPF, the greater the weight that can be given. I therefore now assess the weight that the above policies should be afforded.
- 2.4 In light of the Council's housing land supply position, I determine that the Core Strategy policies relating to the provision of housing (CS1, CS2, CS3, and CS4) carry only limited weight.
- 2.5 Policy SP1 relates to the delivery of sustainable development within the borough, with emphasis on prioritising the efficient use of brownfield land and development opportunities within existing built-up areas within urban settlements. It also sets out a list of requirements (i to xvii) that all development should achieve, which broadly reflect the thrust of policies throughout the development plan. For example, of relevance to this appeal:
- v) avoid prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment;
 - vii) avoid inappropriate development in the Green Belt;
 - xii) do not create an unacceptable level of risk to occupiers of a site, the local community and the wider environment;
 - xv) incorporate the use of Sustainable Urban Drainage Systems (SUDS) where appropriate and where required by the Flood and Water Management Act 2010 to help reduce the risk of flooding.
- 2.6 I consider that this policy applies a restrictive approach to development in the sense that it expresses preference for the reuse of PDL and for development to be located within existing settlement boundaries. However, it also reflects the policy guidance of the development plan when taken as a whole with regards to the points highlighted above and national planning policy does also encourage reuse of PDL. I determine on balance that this policy should carry moderate weight.
- 2.7 Policy SP2 emphasises that planning decisions will take a positive approach that reflects the presumption in favour of sustainable development in line with the

requirements of the NPPF. Given that this policy reflects the main guiding principle of the NPPF I consider that it should carry significant weight.

- 2.8 Policy CS12 states that all development proposals must conserve and enhance the natural environment of the borough, including landscape character, in order to maintain and improve environmental quality and contribute to the objectives of the adopted Greenways Strategy and the Hertsmere Green Infrastructure Plan. I find that this policy is broadly consistent with the aims of Section 15 of the NPPF and therefore should carry significant weight.
- 2.9 Policy CS13 relates to development in the Green Belt, and confirms that development proposals will be assessed in relation to the NPPF. There is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist. The policy also has regard to limited infilling opportunities in the villages of Elstree, Shenley and South Mimms, as well as Key Green Belt Sites, though these parts of the policy are not relevant to this appeal. The main thrust of this policy, being the presumption against inappropriate development in the Green Belt, and the requirement for very special circumstances, is consistent with Section 13 of the NPPF. I therefore conclude that this policy should be afforded significant weight.
- 2.10 Policy CS16 addresses the environmental impact of development and is relevant to matters of drainage and flood risk. It states that proposals will be required to incorporate sustainability principles, minimising their impact on the environment and ensuring prudent use of natural resources by measures including, inter alia: iii) incorporating the use of Sustainable Urban Drainage Systems (SUDS) where appropriate and where required by the Flood and Water Management Act 2010 to help reduce the risk of flooding; and ix) demonstrating that development accords with Policy CS12 and that any adverse effects can be overcome by appropriate alleviation and mitigation, which are capable of being secured through planning conditions or an obligation in accordance with Policy CS21. The Climate Change and Sustainability Interim Planning Policy Statement (CCS IPPS) clarifies that development should make a positive contribution towards the area, its biodiversity alongside climate change adaptation and mitigation. It should also take full account of and positively design for sustainability, net zero carbon emissions, mitigation of climate change and building climate change resilience.
- 2.11 I find this policy to be consistent with Section 14 of the NPPF and therefore significant weight should be afforded it.

- 2.12 Policy CS17 sets out the energy and CO2 reduction requirements that development should achieve. The CCS IPPS clarifies that rather than the Code for Sustainable Homes which has been withdrawn, applicants should work towards the relevant Building Regulations standard. Applicants are also requested to positively consider how they might strive for net-zero carbon emissions on site. I find that this policy is also consistent with the aims of Section 14 of the NPPF and therefore should carry significant weight.
- 2.13 Policy SADM11 states that development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the borough. It further sets out that individual proposals will be assessed for their impact on landscape features to ensure that they conserve or improve the prevailing landscape quality, character and condition, including as described in the Hertfordshire Landscape Character Assessments. The location and design of development and its landscaping will respect local features and take opportunities to enhance habitats and green infrastructure links. The CCS IPPS clarifies that the Council wish to see proposals for real and significant landscape and green infrastructure improvements integrated to all planning applications. Furthermore, green infrastructure should be integrated as a key component of all schemes but in particular for major developments.
- 2.14 I find that this policy broadly accords with the aims of Section 15 of the NPPF, with particular emphasis on paragraph 174b) regarding landscape character. I determine that the policy therefore carries significant weight.
- 2.15 Policy SADM13 states that the natural environment of watercourses and areas of water will be improved wherever possible though Policy SADM16. Watercourses, including culverts, land adjacent to rivers, functional flood plains and flood storage areas should be restored to their natural state. New built development will normally be directed to Flood Zone 1. Reservoirs and water attenuation areas which help reduce flood risk downstream will be retained. This policy broadly accords with the aims of Section 14 of the NPPF in the avoidance and reduction of flood risk. Therefore, this policy may be afforded significant weight.
- 2.16 Policy SADM14 states that the risk of flooding will be avoided and reduced, and sets out a list of principles that new development must satisfy in relation to flood risk. Of these, the most relevant to this appeal are: (i) it must not increase the risk of flooding elsewhere; (ii) within sites at risk of flooding, the most vulnerable parts of the proposed development should be located in areas of lowest flood risk, unless there are overriding reasons to prefer different locations; (iv) development at risk from any form of flooding

should be flood resilient and resistant, with safe access and escape routes: it should also be demonstrated that residual risks can be safely managed; (v) development should incorporate appropriate flood resilient features and flood mitigation measures; (vii) Any necessary flood protection or mitigation measure should not have an undue impact on nature conservation, landscape character, recreation or other important matter; (viii) there should be no net loss in flood storage on site; (ix) flood flow routes should be preserved; (x) where possible, flood storage should be maximised through the use of green infrastructure and sustainable drainage systems; and (xi) the risk from all types of flooding should be reduced as a consequence of development, wherever possible.

- 2.17 As with policy SADM13, I find that this policy accords with Section 14 of the NPPF and therefore it should be afforded significant weight.
- 2.18 Policy SADM15 relates to Sustainable Drainage Systems. In particular, the Council will require the introduction of sustainable drainage (SuDS) on all major developments (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 and any subsequent order). The drainage scheme should provide the most sustainable option from the SuDS hierarchy. Measures should attenuate water runoff at source (e.g. through attenuation ponds, filter strips, swales) and achieve multiple benefits (including management of flood risk and surface water pollution, amenity and biodiversity). The drainage scheme will: (i) achieve the green field runoff rate, or as close to it as practicable; (ii) provide a 1 in 100 year attenuation taking into account climate change; (iii) provide arrangements for future maintenance and management.
- 2.19 As with policies SADM13 and SADM14, this policy also accords with Section 14 of the NPPF and should be afforded significant weight.
- 2.20 Policy SADM16 refers to watercourses. It requires that, inter alia, (i) development will not culvert a watercourse nor build over a culverted watercourse; (ii) the natural environment of the watercourse and areas of water will be conserved or improved; (iii) A minimum 9m wide undeveloped buffer zone will be provided from the top of the bank of any watercourse; and (iv) Opportunities should be provided to support river restoration and enhancement within the catchment of the watercourse. I determine that this policy should be afforded significant weight as it accords with Section 14 of the NPPF.
- 2.21 Policy SADM22 shows the boundary of the Green Belt on the policies map that relates to Policies CS13 and SADM26. It may therefore be afforded significant weight.

- 2.22 Policy SADM26 sets out a list of principles that the Council expects proposed development in the Green Belt to comply with. These relate to the layout, scale and appearance of development, in addition to arboricultural, landscape and ecological concerns and the requirement not to undermine the viability and management of agricultural sites. It specifies that in judging scale on previously developed sites, the Council will make a comparison between the existing and proposed development having regard to floor space; volume; site coverage of buildings and hard standing; height and orientation of development; and change and intensity of use and buildings. The nature and intensity of a new use, its effect on amenity, landscape and the purpose of the Green Belt in that locality will be important considerations.
- 2.23 Whilst this policy sets out more specific requirements than the NPPF with regards to Green Belt development, I consider that it broadly accords with the aims of Section 13. The specific requirements listed at (i) to (viii) relate to matters of scale and visual impact, which the NPPF also has regard to. On this basis I consider that significant weight can be afforded.
- 2.24 Policy SADM40 relates to highway and access criteria for new development, including the accessibility of a development by a range of transport modes, highway safety, priority for pedestrians, cyclist and other non-vehicle users, parking, and Transport Statement/ Assessment requirements. It also notes that mitigation measures at the developer's expense may be required where development is considered to have negative highway impacts. I find that this policy accords with the aims of Section 9 of the NPPF and therefore can be afforded significant weight.

Other material considerations

- 2.25 The National Planning Policy Framework 2021 is a key material consideration to this appeal, with particular regard to paragraph 11 (relating to sustainable development), Chapter 13 (relating to Green Belt) and Chapter 14 (relating to climate change, flooding and coastal change).
- 2.26 The Planning Statement of Common Ground (CD D8) sets out other relevant material considerations including:
- Interim Planning Policy Position Statement – Climate Change and Sustainability (CCS IPPS) (2020);
 - Affordable Housing SPD (2015);

- Biodiversity and Trees SPD (2010);
- Parking Standards SPD (2014);
- Planning and Design Guide (2006);
- Developer Contributions Framework (2021);
- Biodiversity Net Gain Draft Supplementary Planning Document (2022);
- Draft Carbon Offset Fund Supplementary Planning Document (2022);
- Parking Standards Draft Supplementary Planning Document (2022).

The latter three documents are draft SPDs which have been published for consultation but are not yet adopted. They are therefore material considerations, but do not carry the same weight as adopted policy.

- 2.27 As also noted within the agreed Statement of Common Ground, the weight to be afforded to the Council's now set-aside Regulation 18 Draft Local Plan is a matter of disagreement between the parties. I determine that this document does not carry any weight in the assessment of the appeal scheme and will address this further within the Planning Balance section of this Proof. However, both parties agree that the evidence base for the Local Plan is a material consideration.
- 2.28 The National Planning Practice Guidance (NPPG) is a material planning consideration. In particular, I note the amendments made in August 2022 to the NPPG in relation to flood risk and coastal change, which are of particular relevance to this appeal and are addressed by Ms. Waters in her Proof.

3.0 Green Belt

Introduction

- 3.1 The key policy within the Development Plan is Policy CS13 of the Core Strategy. This policy states that "there is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist". (CD F1, p. 60). Whether the proposals conflict with this policy turns on whether very special circumstances exist, which I address later. It is my view that they do not arise here, and on that basis, the proposed development conflicts with this policy and with the development plan read as a whole, as well as with national policy in the NPPF.

- 3.2 Chapter 13 of the NPPF is relevant. Per paragraph 137, the Government attaches great importance to Green Belts, and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. These proposals conflict with that policy aim: they do the opposite of keeping this piece of Green Belt land open.
- 3.3 The five purposes of the Green Belt are set out at paragraph 138 of the NPPF. Of particular relevance to this appeal are purposes;
- a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns from merging into one another; and
 - c) to assist in safeguarding the countryside from encroachment.

Harm by reason of Inappropriateness: Definitional Harm

- 3.4 It is accepted between the Council and the appellant that the appeal scheme constitutes inappropriate development in the Green Belt. Paragraph 147 of the NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the NPPF requires that substantial weight be given to any harm to the Green Belt. Furthermore, 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 3.5 The appeal scheme is therefore by definition harmful to the Green Belt, which carries substantial weight. This is the starting point for determining the harm to the Green Belt arising from the appeal scheme. Any other harm to the Green Belt identified will contribute additional weight, and to that must also be added 'any other harm', which I turn to later in this Proof.

Harm to openness

- 3.6 Whilst there is no definition of openness provided either within the NPPF or the NPPG, it is broadly accepted that 'openness' is a concept which includes (or can include) both spatial and visual elements, and that refers to an absence of built development,

including two-dimensional development such as hard standing. The National Planning Policy Guidance also stipulates that assessments of impact on Green Belt openness can have regard to the duration of a development, and its remediability, as well as the degree of activity likely to be generated.

- 3.7 The appeal site comprises a parcel of previously undeveloped (or greenfield) land adjacent to the settlement edge of Bushey, between Little Bushey Lane and the M1 motorway. Built form within the site is limited to timber boundary fencing and some electricity pylons bisecting the site's south-eastern field. The site's topography varies to the degree that the site's openness can be appreciated particularly from high points of the public right of way that crosses the site in a generally east-west direction. Mr. Radmall deals with the viewpoints from which the openness of the appeal site can be seen and appreciated, and key viewpoints relevant for consideration as part of this appeal have been agreed between Mr. Radmall and the appellant at paragraph 3.8 of the landscape Statement of Common Ground (CD D9).

Openness: Spatial Impact

- 3.8 The spatial impact of the appeal scheme arises from the introduction of up to 310 dwellings of up to 2.5 storey height, together with internal road infrastructure, car parking, landscaping, boundary treatments, and other residential paraphernalia. Whilst the appeal scheme does not propose the construction of a primary school, it is reasonable to also consider the built form arising from the school land as this would be relevant once delivered.
- 3.9 As noted by Mr. Radmall (paragraphs 6.2 and 6.3 refer) the parameters plans indicate some 56% of the appeal site would be occupied by built development, or a total of approximately 10.35 hectares (including buildings and streets/ infrastructure) according to the figures presented within the appellant's Design and Access Statement. This would introduce a substantial amount of footprint and volume of built form on a site otherwise devoid of development, with the exception of the electricity pylons and timber post-and-rail fencing. Whilst there are relatively recent developments nearby, such as the Rossway Drive residential development to the north-west of the site (which was a housing allocation within the adopted Local Plan and remains in the Green Belt), there are none of such a significant scale. The Rossway Drive development itself had a developable site area 2.53 hectares and comprises a total built footprint of approximately 15,000 m². The development to the south of this allocation, now known as Plomley Place and which reads as an extension

to Rossway Drive, contributed an approximate additional 5,700 m² of built form including hard standing.

3.10 Though the scale of the individual buildings proposed within the appeal scheme is unknown at this stage, the development as a whole would clearly result in a substantial physical intrusion in the Green Belt as a result of its scale, whether taken as a standalone development or within its context of neighbouring developments. The effect would be to significantly erode the spatial openness of the site.

3.11 Accordingly there would be a significant spatial impact arising from the proposed development, which would result in harm to the openness of the Green Belt.

Openness: Visual Impact

3.12 The site's visual openness is appreciable from a number of views localised to the appeal site and its immediate vicinity.

3.13 A Landscape and Visual Impact Assessment (LVIA) was submitted at application stage (CD A15). Mr. Radmall addresses the conclusions of the LVIA, and explains where he differs from them, and why, and I adopt his evidence. The visual impact of the appeal scheme on Green Belt openness would be appreciable from a number of viewpoints as set out within the LVIA, though particularly from viewpoints on Little Bushey Lane (LVIA views 3 and 4), and from the two public rights of way that cross through the site (PROW 033 and 044).

3.14 For a detailed assessment of the proposed development's visual impact, I would refer the Inspector to Mr. Radmall's Proof. Whilst Green Belt and landscape are separate planning matters, there is crossover where the visual impact on Green Belt openness is concerned; hence, assessments of visual impact on Green Belt openness often rely on LVIA.

3.15 Mr. Radmall's Proof evidences that the site meets the test of Green Belt openness and is spatially open. As a result of the development, the site "would thereby lose any sense of its current openness (the exceptions being the streets and probably part of the primary school site)." (para. 6.3 refers). Whilst it is noted that the appeal scheme proposes public open space and landscaping enhancements, these would not necessarily screen or mitigate the development's impact on Green Belt openness. In this regard I draw particular attention to paragraph 6.6 of Mr. Radmall's Proof.

3.16 The development would also impact on visual openness from within the site. Referring to the Burston Nurseries appeal decision (CD I36), in this case it was noted that the

site was well-contained but that the development would be visible to those within the site, despite there being no public right of way through the site. The appeal scheme, by contrast, has two public rights of way through it. For users of the public rights of way, as well as various residents, staff and visitors to the site, the development will impact significantly on visual openness.

- 3.17 I therefore determine that the effect of the proposed development, in reducing the openness of the appeal site, would be visible and appreciable from a number of viewpoints as well as from within the site, which adds to the overall harm.

Openness: Other considerations

- 3.18 In terms of the duration, or remediability of the development, the appeal scheme can be assumed as a permanent addition to the landscape insofar as it proposes a substantial number of new dwellings, which are intended to form part of the settlement of Bushey. The demolition or removal of the scheme is highly unlikely.
- 3.19 In terms of the level of activity to be generated, the scheme of up to 310 dwellings would see many hundreds of new residents. In terms of traffic movements, the submitted Transport Assessment suggests an increase in vehicle trips by 295 in the AM peak and 203 in the PM peak. There would also be a significant increase in visits to and from the site on foot or via sustainable transport methods in order to access the primary school, once delivered. Whilst the highways impact of the development are considered to be acceptable, in Green Belt terms this is a very significant intensification of use.
- 3.20 I therefore find that in this respect, the development would be at odds with the fundamental aim of keeping Green Belt land permanently open.

Other harm: Green Belt purposes

- 3.21 In addition to the definitional harm arising from the proposed development, and the visible loss of openness, the development would conflict with the purposes of including land in the Green Belt. Mr. Radmall addresses this issue in his proof and I adopt his conclusions.
- 3.22 I agree with him that the proposed development would not conflict on a strategic level with purposes (d) or (e), but that within a local frame of reference purposes (a), (b), and (c) would be conflicted with. I concur with Mr. Radmall that, despite the conclusion

of the LVIA that the appeal site is not at the edge of a distinct built-up centre, Bushey is certainly perceived as a large built-up area both on the map and when driving through it. I therefore determine that the development would result in an unrestricted outwards sprawl of built form from the built-up edge of Bushey into the open Green Belt and towards the M1. As such there would be conflict with purpose (a) of the Green Belt.

- 3.23 I also find that the development would conflict with purpose (b) of the Green Belt, which relates to the merging of neighbouring towns. The Council's Stage 2 Green Belt Assessment, and the appellant's LVIA, notes that Sub-Area 57 (within which the appeal site is located) forms part of a wider gap between Bushey Heath/ Bushey Village and Elstree. Whilst the Sub-Area is considered to perform only moderately against this purpose, the proposed development can therefore be considered to materially conflict with this purpose in the sense that it would erode some of the existing gap between Bushey and Elstree. Indeed, Mr. Radmall's Proof finds a c.17% encroachment into this gap.
- 3.24 The development would also undermine purpose (c) of the Green Belt, which relates to safeguarding the countryside from encroachment. I adopt the conclusions of Mr. Radmall, who finds that the intrinsic character of the site remains that of a parcel of countryside. The proposed development of up to 310 homes, including internal road infrastructure, car parking, and residential paraphernalia would have an urbanizing effect on the site, which would thereby cease to form part of the countryside.
- 3.25 Overall it is a feature of this case that the proposals conflict with at least three of the identified purposes of including land in the Green Belt.
- 3.26 Taking all of this together, in my view the level of harm caused to the Green Belt is above the minimum, or lowest end of the scale. The spatial reduction in openness arising from a scheme of up to 310 dwellings is significant, and can be observed from a number of viewpoints as well as from within the site. I also consider that the scheme would conflict with at least three identified 'purposes' for including land in the Green Belt, and would be at odds with the fundamental aim of keeping Green Belt land permanently open. I conclude that the harm to the Green Belt I have identified should carry substantial weight, at the higher end of this scale.

Other harm: Landscape impacts

- 3.27 The Council's second reason for refusal, had it been able to determine the application, refers to harm to the character and appearance of the landscape; in particular, due to the visual impact of the development on existing open views with rural aspect from Little Bushey Lane and nearby Public Rights of Way. The NPPF (2021), Policy CS12 of the Hertsmere Core Strategy (2013) and Policy SADM11 of the Site Allocations and Development Management Policies Plan (2016) were cited.
- 3.28 Landscape harm is addressed separately by the Council's Landscape witness, Mr. Radmall. The Inspector is therefore referred to Mr. Radmall's Proof for a full assessment, the conclusions of which I adopt and rely upon in my own evidence.
- 3.29 To summarise his conclusions, the overall perception of the site is of its openness, both visually and in terms of its contributions to the purposes of the Green Belt, its preponderance of countryside features, and its relationship to the settlement edge due to its proximity and its contrasting character. The appellant's LVIA has consistently under-estimated the sensitivity of landscape receptors within the site. In a local frame of reference, the site makes a substantial contribution to purpose (a) of the Green Belt, and a moderate contribution to purposes (b) and (c). The appeal scheme would significantly harm the site's contribution to these purposes. The appeal scheme would transform the character of the site from being part of the countryside to an extension to the settlement, with more than half occupied by built development, a substantial proportion of which being more than two storeys in height. Its open and rural character would be lost and its natural terrain either modified or masked. Where countryside features such as hedgerows are retained, they would to varying degrees become embedded within the built-up area, and their visual influence much reduced. In the parts of the site to be used as green space, the introduction of amenity would have a suburbanizing influence and openness would be lost over time as landscaping matures.
- 3.30 Accordingly, in addition to the harm to the Green Belt, I consider that the development would result in harm to the character and appearance of the landscape. This conflicts with the following policies:
- NPPF paragraph 174 b) – to recognise the intrinsic character and beauty of the countryside;
 - Core Strategy Policy CS12 – to conserve and enhance the landscape character of the borough;

- Site Allocations and Development Management Policies Plan Policy SADM11 – to conserve, enhance and/or restore the character of the wider landscape across the borough.

This additional, and separate, measure of harm carries significant weight.

Other harm: Flood risk

3.31 The Council specified a reason for refusal relating to flood risk as follows:

The proposed development has failed to demonstrate that it would not result in increased flood risk to future occupiers of the development or the surrounding area, and that an appropriate drainage scheme could be achieved. This is contrary to the NPPF (2021), Policy CS16 of the Hertsmere Core Strategy (2013), and Policies SADM14 and SADM15 of the Site Allocations and Development Management Policies Plan (2016).

This arose due to the objection of Hertfordshire County Council as Lead Local Flood Authority (LLFA).

3.32 As part of the appeal process, the appellant submitted an amended Flood Risk Assessment and parameters plans. The Council carried out a re-consultation as agreed with the appellant and the Inspector. On 22nd March 2023 the LLFA responded to this consultation maintaining their objection to the scheme. Their objection relates to the absence of an acceptable Flood Risk Assessment and Drainage Strategy relating to:

- Local flood risk to the development from surface water flooding and ordinary water courses;
- The development adversely affecting flood risk from SuDS features not being sized to accommodate additional water from surface water flow paths originating from off site;
- Not complying with NPPF, PPG and local policies (SADM13 – The Water Environment, SADM14 – Flood Risk, SADM15 – SuDS).

3.33 The objection from the LLFA also recommends that the Council consider whether there has been sufficient investigation of the sequential test for development at this location. They consider that, as the site is at medium to high risk of surface water flooding, a site-specific sequential test would be required to assess this.

- 3.34 I refer to Ms. Waters' Proof, which was prepared following submission of the above objection comments. She concludes that the required Sequential Test has not been undertaken for this site in relation to all sources of flooding. Furthermore, the revised FRA modelling is not sufficient to assess the risk of surface water flow paths, ordinary watercourses and existing surface water sewers to the site and surrounding area. Additionally, the revised FRA underestimates the current flood risk to the site and surrounding area. The appellant's current modelling shows an increased flood risk to upstream properties which is contrary to the NPPF, the NPPG and the policies of the Development Plan. Furthermore, it is unclear whether the appellant is using the correct rainfall profiles and therefore they could be underestimating the volumes of attenuation required. I adopt her conclusions.
- 2.35 I consider that the harm arising from flood risk should carry significant weight. In line with the environmental objective of the NPPF, development must protect and enhance our natural environment and mitigate and adapt to climate change. The LLFA as statutory consultee have advised the LPA that the development as currently proposed would result in increased flood risk both to future occupiers of the site and surrounding areas. This contravenes the environmental objective of the NPPF and conflicts with Development Plan policies CS16, SADM13, SADM14, SADM15 and SADM16. Importantly, the areas currently indicated as for development on the submitted parameters plans may be required for flood management or mitigation and onsite SuDS. The Outline scheme therefore fails to identify appropriate developable areas. This in-principle concern raised by the LLFA make the development parameters potentially unacceptable as currently proposed.

Very Special Circumstances

- 3.36 As set out previously, the proposed development is inappropriate development which is harmful by definition and should not be approved except in very special circumstances, per the requirements of NPPF paragraph 147. Paragraph 148 of the NPPF stipulates that in order for very special circumstances to exist, the potential harm to the Green Belt together with any other harm must be clearly outweighed by other considerations.
- 3.37 The proposed development would result in definitional harm to the Green Belt, a reduction in Green Belt openness (both spatial and visual) and conflict with Green Belt purposes. There is therefore actual harm in addition. Per the requirements of NPPF

paragraph 148, these harms are afforded substantial weight. In terms of other harms, this is limited to landscape character and appearance (significant weight) and flood risk (significant weight). It must be determined whether the benefits of the scheme amount to Very Special Circumstances such that they would clearly outweigh these harms.

- 3.38 A breakdown of the suggested benefits of the appeal scheme, and the weight the Council attributes to these, are set out in the Council's Statement of Case (CD D2, paras. 4.37-4.46 refer). Further justification for these are now provided.

Provision of housing

- 3.39 The main benefit of the scheme is agreed to be the delivery of housing (market/general, affordable and self-build) in the absence of a five year housing land supply. I determine that this benefit should carry significant weight. The Council calculates the housing land supply to be 2.25 years, as set out within the Five Year Housing Land Supply 2021/22 (September 2022) (CD H1). As noted within the main Statement of Common Ground (CD D8), the appellant maintains that the Council has a housing land supply of 1.22 years. It is not known at this stage what evidence the appellant will rely on to justify this and accordingly the Council reserves the right to submit a supplementary Proof as may be required to address this.
- 3.40 The appeal scheme would contribute up to 310 dwellings towards the borough's housing stock. Of these, 40% would be affordable and 5% would be self-build (equating to 5.5 units if the maximum provision was built out). The Council are satisfied that the affordable housing proposed would exceed the requirements of Policy CS4 of the Core Strategy.
- 3.41 Turning first to market housing. Though the Council does not have a five year housing land supply, it has delivered more than 75% of its housing in the last three years. Whilst there is dispute between the Council and the appellant as to the extent of the shortfall, the range of difference between the two positions is unlikely to be significant as to impact materially on the level of weight to be afforded to the shortfall. For my own planning balance, whether I assess this benefit on the basis of 2.25 years of supply or the Appellant's figure makes no difference to the weight I attach to this benefit. The shortfall is significant in either case, and the contribution made by the proposals would in that sense be welcome and helpful.
- 3.42 I would refer the Inspector to a recent appeal decision in the neighbouring authority of St. Albans (appeal ref. APP/B1930/W/20/3260479, CD I35). The development

proposed up to 100 homes in the Green Belt, with part of the site being brownfield land. In this case the authority had a housing land supply of 2.4 years as well as a very out of date local plan. Efforts to produce a new Local Plan had not been successful, with two emerging plans found to be unsound. Furthermore, as with Hertsmere, almost all the undeveloped land in the district outside of the built-up areas fell within the Metropolitan Green Belt. The Inspector determined that for the proposed number of units, and noting that the NPPF seeks to significantly boost the supply of housing land, significant weight should be afforded to the contribution of up to 100 units towards housing land supply.

- 3.43 Hertsmere has a broadly similar housing land supply position and furthermore the draft (Regulation 18) Local Plan for the borough has been set-aside, thus carrying no weight in the determination of planning applications, with the adopted local plan long out of date. Whilst the Little Bushey Lane appeal scheme proposes in excess of 100 homes, and therefore would more significantly boost the supply of housing in the borough, I do not find that this would justify a material increase in the weighting to be afforded to this benefit as a whole given that the appellant could deliver significantly fewer than 310 homes on this site.
- 3.44 On the matter of self-build dwellings, it is acknowledged that there are no policies within the adopted Local Plan that address this housing need. However, there is not huge demand for self-build in Hertsmere; the Council's Self Build Register has a total of 76 individuals and 4 group entries up to 30/10/2022. One further individual has been added since this date though notably 13 homes were permitted for self-build in 2021/22. Of those on the register, only nine are residents of Bushey and only seven have listed Bushey as their preferred location. In this context, the provision of 5% (total 5.5 units) for self-build is therefore considered to make a limited positive contribution to the weighting afforded to housing delivery as a whole. Nonetheless, with the above considerations, the Council suggests that the attribution of significant weight to the contribution of up to 310 homes is proportionate.
- 3.45 In respect of affordable housing, the appeal scheme proposes 40% (max. 124 units). This would be in excess of the policy requirement of 35%. The tenure mix of the affordable units has not been discussed with the appellant though it is understood from the draft s.106 agreement that the appellant is proposing 70% affordable rented and social housing, 25% First Homes and 5% intermediate housing. Whilst the Council's Affordable Housing SPD expresses requirement for 75% social and affordable rent and 25% intermediate (for schemes of 15+ units), this SPD pre-dates the introduction

of First Homes and therefore the proposed tenure mix is considered to be policy compliant. In the context of the Council's HLS position, and the clear identified need for affordable homes in the borough, this is a noted benefit of the scheme that would contribute positively to the case for VSCs. With the above matters considered I would attribute significant weight to the contribution of up to 124 affordable dwellings.

Economic benefits

- 3.46 The appellant suggests that the development would result in short-term employment during construction and long term economic benefits from future expenditure on goods and services in the area. These are considered to be benefits that could arise from development in any location and, whilst still very much benefits of the scheme, I afford them limited weight in the VSCs case.

Primary school need

- 3.47 The appellant suggests that the set-aside Regulation 18 draft Local Plan (and its evidence base) identified that additional primary and secondary provision was required to support the proposed growth strategy. However, this need was based on anticipated growth at the time which is subject to change due to possible upcoming changes in national policy relating to housing need. The projected growth may therefore differ from that stated in the draft Local Plan. Furthermore, comments received from Hertfordshire County Council (HCC) at application stage noted that whilst the land would contribute to meeting need arising from future growth, it would not be required to meet educational need arising directly from the development as this need could be absorbed by existing schools in the area. I have also noted further comments received from HCC (dated 30 March 2023) as part of the re-consultation on drainage and flood risk matters. The amended parameters plans show alterations to the proposed primary school land, including enlarged drainage features, which may impact on the ability of the land to deliver a compliant primary school and result in abnormal construction and operational costs. However, I note that these issues may be addressed through discussion between HCC and the appellant.
- 3.48 On the whole and in light of the above, I determine that this benefit should carry no more than moderate weight.

High-quality design

- 3.49 The appellant states that the development would be of a high-quality design. The design of the scheme is a reserved matter and therefore very limited detail has been provided beyond the parameters plans. Suitable design conditions have been

suggested to ensure that the design is suitable, though on the whole the Council's Principal Urban Designer has raised concerns with the design of the masterplan including its layout. In any event, high-quality design is a minimum and not a benefit. I consider that as a benefit this should carry no more than neutral weight in light of these factors.

Biodiversity

- 3.50 The appeal scheme proposes to provide 10% Biodiversity Net Gain (BNG) on site. Whilst this is in excess of current national policy requirements, it would meet the minimum requirements of the Council's draft BNG SPD which is itself a material consideration. It is not unusual for major schemes within the borough to propose in excess of 10% BNG as part of their suite of 'benefits', so I do not therefore find a 10% BNG to be particularly remarkable, especially in the case where the appeal scheme would result in environmental harm due to the aforementioned Green Belt, landscape and flood risk concerns. Having regard to a recent appeal decision (APP/B1930/W/21/3279463, CD I36, para. 75 refers) whereby an extraordinarily high BNG of over 137% for habitats and over 7600% for hedgerows was afforded only moderate weight by the Inspector, I consider it proportionate to assign limited weight to this benefit.

Community facilities/ mobility hub

- 3.51 The appeal scheme would provide a building close to the primary school site, known as the mobility and community hub. Limited detail was provided at application stage as to what uses and facilities this building would provide. At the time of writing this Proof I have seen some further detail within the draft s.106 agreement, which indicatively suggests provision of a café, reading area, shared office space, parcel drop-off and collection, a bike stop, information on car sharing, walking, cycling and local public transport, and electric vehicle charging points and cycle parking. The building would therefore fall within Use Classes E and F2. As set out in the Council's Statement of Case (CD D2) the provision of community facilities may be supported by Policy CS18 of the Core Strategy, and this facility would form part of the scheme's sustainability measures in particular by promoting sustainable transport and modal shift. Per the main Statement of Common Ground (CD D8) both the appellant and the Council agree that as a benefit of the scheme this should carry moderate weight in the planning balance.

Public open space and recreation space

- 3.52 It is agreed between the Council and the appellant, per the main Statement of Common Ground (CD D8) that this benefit should carry moderate weight. The proposed public open space would be accessible both to new and existing residents, via the existing public rights of way. However, as set out in my Statement of Case (CD D2), this benefit is tempered by the fact that the public rights of way would be urbanised by the surrounding built form and would go from a rural countryside aspect to a suburban one.

Sustainability benefits

- 3.53 The Council and the appellant have agreed, per the main Statement of Common Ground (CD D8) that the final design solution and associated detail to deliver sustainability benefits can be provided at reserved matters stage. At Outline stage, the appellant has indicated intention to provide EV charging infrastructure, the possible use of PV panels on suitable buildings, energy efficient homes with specifications above Building Regulations, and use of air source heat pumps. The Council's draft Sustainable Transport and Parking Standards SPD sets out that EV charging is a requirement for all new residential development, and furthermore EV charging is now a requirement of Building Regulations.
- 3.54 Furthermore, the draft Carbon Offsetting SPD states that developments should be achieving net-zero or as close as possible. The clarifications set out by the Climate Change and Sustainability Interim Planning Policy Position Statement also make clear the Council's expectations in relation to sustainability and net zero carbon development. Very limited detail has been provided by the appellant at outline stage, and therefore the Council's Climate Change and Sustainability Officer commented that insufficient information was submitted to demonstrate that emissions would be suitably reduced. Whilst it is noted that further information would be submitted at reserved matters stage, this benefit is considered to contribute limited weight to the VSCs case.

Conclusion

- 3.55 The Council acknowledges that there are benefits to the appeal scheme, particularly the contribution towards the borough's housing stock and delivery of affordable homes in excess of policy requirements. Nonetheless, I do not consider that these benefits either individually or cumulatively amount to Very Special Circumstances such that they clearly outweigh the harm to the Green Belt, and the other harms arising. Accordingly very special circumstances do not exist.

4.0 Planning Balance & Conclusion

- 4.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 11 of the NPPF stipulates that planning decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay. However, where the most important policies for determining the application are out of date, permission should be granted unless the benefits are significantly and demonstrably outweighed by the adverse effects; or the application of NPPF policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the NPPF establishes that the Green Belt is an 'area or asset of particular importance'.
- 4.2 The Council cannot demonstrate a five year housing land supply and accordingly the development plan policies most important to the determination of the appeal may be considered to be out of date. However, as a result of footnote 8 NPPF para 11d)i) is engaged. For the avoidance of doubt, I deal with weight to policies and those most important are:

Hertsmere Core Strategy (2013)

- SP1 Creating Sustainable development
- SP2 Presumption in favour of sustainable development
- CS1 The supply of new homes
- CS2 The location of new homes
- CS3 Housing delivery and infrastructure
- CS4 Affordable Housing
- CS12 The enhancement of the natural environment
- CS13 The Green Belt
- CS16 Environmental impact of development
- CS17 Energy and CO2 reductions

Site Allocations and Development Management Policies Plan (2016)

- SADM11 Landscape Character
- SADM13 The Water Environment
- SADM14 Flood Risk
- SADM15 Sustainable Drainage Systems
- SADM16 Watercourses

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

4.3 I have addressed the weighting of these policies at section 2 of this Proof. To summarise, I determine that policies CS1, CS2, CS3 and CS4 may only be afforded limited weight in light of the Council's housing land supply position. To Policy SP1 I determine that moderate weight should be afforded. To all other policies listed above I attach significant weight owing to their consistency with the NPPF.

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

4.4 The appeal site was allocated for housing development (up to 350 dwellings) within the draft Local Plan (Regulation 18, dated September 2021) under policy H10 (CD G4). This site was known as B1. However, I would draw attention to the fact that the test of 'exceptional circumstances' to alter Green Belt boundaries as part of the Local Plan process is lesser than the test of 'very special circumstances' which must be met here ([2019] EWHC 3242 (Admin)) (CD J5). The set-aside plan, and the draft allocation, should not carry any weight because there is no prospect of it ever being adopted. Paragraph 48 of the NPPF states that LPAs may give weight to relevant policies in emerging plans according to:

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

4.5 The set-aside Local Plan was, in any event, at an early stage of preparation (Regulation 18). The public consultation drew almost 18,000 responses, a significant proportion of which raised objections relating to the draft housing allocations, proposed alterations to Green Belt boundaries, and housing projections. Accordingly, the decision was taken by Full Council on 27 April 2022 to 'set-aside' the emerging

Local Plan. With particular regard to the first two bullet points of NPPF paragraph 48, the draft local plan is therefore considered not to carry any weight for the purposes of this appeal. It is clear, though, that even before it was set aside, its provisions would not have attracted very much weight at all, in line with the approach mandated by NPPF paragraph 48. It was at a very early stage, and there were very significant unresolved objections to the draft housing allocations.

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

Benefit	Weight
Market housing including self-build	Significant weight
Affordable housing	Significant weight
Economic benefits: short-term employment during construction and long-term benefits from future expenditure on goods and services in the area	Limited weight
Primary school need	Moderate weight
High-quality design	Neutral weight
Biodiversity	Limited weight
Community facilities/ mobility hub	Moderate weight
Public open space and recreation space	Moderate weight
Sustainability	Limited weight

Table 1: Public Benefits

- 4.7 The development would be inappropriate development in the Green Belt, which is harmful by definition. This harm is required to carry substantial weight per NPPF paragraph 148. Further harm to the Green Belt has been identified in addition to this definitional harm; harm to Green Belt openness (visual and spatial) and conflict with Green Belt purposes. Overall I consider that the harm to the Green Belt must carry substantial weight.
- 4.8 In terms of 'other harm', harm to the character and appearance of the landscape and harm relating to flood risk and drainage has been identified. Both of these harms are

considered to separately carry significant weight. The proposed development would conflict with policies CS12 and SADM11 in regards to landscape impact, and I afford both these policies significant weight. In respect of flood risk, I find conflict with policies CS16, SADM13, SADM14, SADM15, and SADM16, each of which also carry significant weight. Policy conflict is also therefore relevant in the planning balance.

- 4.8 In my view the test at paragraph 148 is failed: the benefits of the scheme, taken together, do not clearly outweigh the harm that has been identified. Accordingly, very special circumstances do not exist. NPPF paragraph 147 therefore indicates that planning permission be refused, and that is my recommendation to this Inquiry. The proposals should be determined in accordance with the development plan here, and permission refused.

6.0 Summary

- 6.1 This Proof relates to Green Belt and planning balance matters, and should be read alongside the Council's Statement of Case, as well as the Landscape Proof of Evidence provided by Mr. Radmall.
- 6.2 Section 2.0 of the Proof sets out the key policies and material considerations relevant to this appeal. Section 3.0 sets out the Green Belt assessment, including identification of Green Belt harm and any other harm before approaching the appellant's case for very special circumstances. I conclude that the scheme would result in definitional harm to the Green Belt, as well as harm to Green Belt openness (spatial and visual) and conflict with Green Belt purposes. These are afforded substantial weight in line with the requirements of NPPF paragraph 148. There is also landscape harm, as described by Mr. Radmall, and to which significant weight is attached. I conclude that harms associated with potential increased flood risk as set out by Ms. Waters should also carry significant weight.
- 6.3 The applicant's case for very special circumstances is addressed in full and justification is set out for the weighting that the Council affords to each of the cited benefits. The benefits arising from the provision of market housing (including self-build homes) is afforded significant weight, and the provision of affordable housing is afforded significant weight. Other economic benefits identified are considered to carry limited weight. Provision of land for a primary school in response to growth needs is afforded moderate weight. Achieving a development of high-quality design is considered to weigh neutrally. The biodiversity benefits and sustainability benefits are considered to both separately carry limited weight. The provision of community facilities/ a mobility hub is afforded moderate weight, and the provision of public open space and recreation space is also separately afforded moderate weight.
- 6.4 A planning balance is set out at section 4.0 of this Proof. I consider that the balance rests on the test at paragraph 148 of the NPPF, and that this test is failed given that the benefits of the scheme do not clearly outweigh the harms as I have identified and analysed them. There are therefore no very special circumstances. Accordingly the appeal should be dismissed.