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# Appeal Decision

Inquiry held on 22-25 August, 6 & 9 October 2023

Accompanied Site visit made on 21 August 2023

**by Nick Fagan BSc (Hons), DipTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> January 2024**

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**Appeal Ref: APP/N1920/W/23/3320599**

**Land south of Shenley Road, Radlett, Hertfordshire WD7 7BP<sup>1</sup>**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Fairfax Acquisitions Ltd against the decision of Hertsmere Borough Council (HBC).
  - The application Ref 22/1539/OUT, dated 7 September 2022, was refused by notice dated 2 March 2023.
  - The development proposed is the erection of up to 195 new homes (45% affordable), safeguarded land for the expansion of Newberries Primary School and provision of a new medical centre, along with associated access. Outline application to include the matter of Access (with the following matters reserved: Appearance, Landscaping, Layout and Scale).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Considering the publication of the revised National Planning Policy Framework (NPPF) on 19 December 2023, the three main parties were given sufficient time to comment on any implications of such regarding the issues pertinent to this appeal, which they all did on 8 January. I have taken their comments into account in arriving at my decision, albeit they all consider that there have been no material changes in national policy to the key policy tests relevant to this appeal. References below to paragraph numbers in the NPPF are references to the latest, current version.
3. A signed S106 unilateral undertaking dated 2 November 2023 (the S106) has been submitted by the appellant and current landowners. This provides for the delivery of several obligations should permission be granted, and I address these below where relevant.

## Main Issues

4. The site lies within the Metropolitan Green Belt. As the main parties agree that the proposed development would constitute inappropriate development in the Green Belt with regard to the NPPF, the main issues in this appeal are:
  - a) The effect of the proposed development on the openness and purposes of the Green Belt;

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<sup>1</sup> This postcode is that of the nearest properties to the site, in Faggots Close

b) The effect of the proposed development on the character and appearance of the area, specifically on the landscape; and

c) Whether any harm to the Green Belt, any harm to the landscape and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances (VSCs) necessary to justify the proposed development.

## Reasons

### Green Belt Issues

5. The 11.45 hectare (Ha) site is a greenfield tract of land on the south-eastern edge of Radlett, a settlement with a population of 10,060 at the 2021 census. The majority of the site is an agricultural field used as pasture, which slopes gently downwards from northwest to southeast, although the southern part of it located between Newberries Primary School and Theobald Steet contains Theobald's Wood, a Local Wildlife Site.
6. Its western boundary backs onto the rear gardens of the houses in Radlett's adjacent suburban streets, Newberries Avenue, Williams Way and Faggots Close, as well as the grounds of Newberries Primary School. Its northern boundary is the hedge line on Shenley Road. Its eastern boundary abuts the block of woodland (of about 40 Ha), known locally as Newberries Wood and The Gorse, which lies to the southeast of the site between Shenley Road and Theobald Street.
7. The whole of the site lies within the Green Belt. Approximately 8 Ha of it would be developed for new homes, a new medical centre and the necessary access roads. As such, the proposal would be inappropriate development in the Green Belt, since it does not fall within any of the exceptions in NPPF paragraphs 154 and 155.
8. As NPPF paragraph 152 states: *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.'* All the parties agree that substantial weight should be given to any harm to the Green Belt, as paragraph 153 mandates. That paragraph goes on to state: *'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.'* Consequently, the overriding main issue in this appeal is whether the benefits of the proposed development (the 'other considerations') clearly outweigh the overall harm, in order to establish the VSCs necessary to allow this appeal.
9. The appellant's argument that its effect on openness does not need to be added to its definitional effect is a moot point. Built development will obviously have an effect on openness. But that does not mean that the development's effect on Green Belt openness should not be properly assessed and addressed, as indeed it was at some length at the Inquiry, because its effect on openness would result in an essential part and physical evidence of its inappropriateness.
10. The parties all agree that there is both a spatial and visual aspect to the effect of the development on openness, which I address below. However, it is pertinent to emphasise here that, as NPPF paragraph 142 states: *'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.* The term 'urban sprawl' may, as the appellant suggests, possibly be regarded as a derogatory description for built or urban development. But what national Green Belt (and Local in this case as well) policy undoubtedly aims at is the prevention of such development extending onto open land classified as Green Belt, including land next to or surrounding existing built-up or urban development within settlements not in the Green Belt, as is the case here.

### *Effect on Openness*

11. The majority of the site would be permanently developed with new buildings and access roads and would encompass all the associated activity that residential development and a new GP surgery would engender. That would obviously have an unequivocal and significant effect on its openness, as agreed by the appellant. Since Green Belt policy is, as I highlight above in terms of the NPPF text, essentially a spatial policy designed to keep land open, the proposal is in direct conflict with policy. Consequently, simply in terms of national policy, and irrespective of the fact that the development's inappropriateness and effect on openness essentially comprise the same type of harm, substantial weight must be given to such harm.
12. In terms of the visibility of the development's effect on openness, it is undoubtedly the case that the woodland block to the east of the site and that forms the southern part of the site would generally shield it from wider views in the surrounding Green Belt countryside. There would be glimpsed views of the new houses from the northern part of Public Footpath 55 near to where it meets Shenley Road and, especially in winter, glimpsed views of the houses on the northerly-most part of the site facing this road including from the drivers of passing vehicles. In the winter it may just be possible to achieve glimpsed views of the southerly houses in the development through Theobald's Wood but such glimpses would be insignificant due to the depth of the woodland belt here. The kink in the pedestrian and cycle access track from the development to Theobald Street would prevent any direct views of it from the road.
13. The site's character is obviously impacted by the suburban houses within Radlett's settlement boundary on the whole length of its western boundary: it is a field directly abutting suburban residential development; the windows of these single and two-storey houses look out onto the site.
14. As such, the proposed development would not be particularly visible compared to other parts of the Green Belt in the locality or indeed in other parts of the Borough that are not contiguous with a settlement boundary and not enclosed by a thick woodland belt. Consequently, I agree with the appellant that it is relatively visually self-contained.
15. Nonetheless, despite this, the loss of 8 Ha of Green Belt land to built development will clearly have a significant adverse effect on its openness, which would be a physical manifestation of its inappropriateness.

### *Green Belt Purposes*

16. The principal Green Belt purposes in dispute are a), b) and c) of NPPF paragraph 143. First, 'a) to check the unrestricted sprawl of large built-up areas'. The appellant does not consider Radlett to be a large built-up area, and neither did the LPA's consultant, Arup, in the Green Belt Assessment Stage 2

for the emerging Local Plan (ELP)<sup>2</sup>, as acknowledged by the officer Committee report for the application<sup>3</sup>. Compared to Greater London, Radlett is not a large built-up area.

17. I note that the Inspector in the recent Little Bushey Lane decision<sup>4</sup> found that Bushey did not comprise a large built-up area in terms of purpose a) because it contains a smaller built-up area than Borehamwood, the largest settlement in Hertsmere, and because spatial separation from large built-up areas would be retained. I acknowledge that Bushey is a second-tier settlement in the Hertsmere Local Plan whilst Radlett is the only third-tier settlement. However, there is no definition in national or local policy of what constitutes a large built-up area in terms of purpose a). Furthermore, I cannot see how a settlement of 10,060 people can realistically not comprise (or be described as) a large built-up area: it does, simply as a matter of fact, and it certainly is in terms of Hertsmere's built-up areas.
18. The appellant also maintains that even if I consider Radlett to be a large built-up area, the proposal will not result in 'unrestricted sprawl' due to the containment of the site by the adjacent woodland block. I disagree because Green Belt policy is essentially a spatial policy to preserve openness. It will only result in sprawl in terms of the 8 Ha developed at the site, which will be visually self-contained by the woods, but that would nonetheless be unrestricted sprawl in terms of how national policy is written because it would allow Radlett's further sprawl.
19. Second, purpose 'b) to prevent towns merging into one another'. There is no allegation by the Council that Radlett will physically merge with Shenley or Borehamwood because of the proposal. Rather, there will be a reduction in separation between these settlements. Again, I acknowledge that the visual perception of such reduction will be limited, because of the predominant masking effect of Theobald's Wood from Theobalds Street, the proposed strengthening of the site's northern and eastern boundary by new native tree and shrub planting as well as the adjacent woodland block itself and the nearly 90° bend in Shenley Road away from the site.
20. The development would reduce the gap between Radlett and Borehamwood from approximately 1.7km to 1.4km, and between Radlett and Shenley from approximately 1km to 0.9km. I acknowledge that the reduction of both these gaps would not noticeably affect walkers and drivers' perceptions of continuing to travel through countryside gaps between these settlements.
21. But that reasoning could equally apply to other fields between these settlements and would cumulatively result in smaller and smaller gaps until only a single field might remain. I accept that the less of a gap there is between settlements separated by Green Belt, the more important those gaps are in terms of purpose b). But the existing 1.7km and 1km gaps are relatively small gaps between settlements, which are fairly characteristic of the Metropolitan Green Belt and it is important to spatially preserve open land between such settlements if the policy is to continue to be an effective planning tool in the Metropolitan Green Belt.

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<sup>2</sup> CD 4.27, page 66; all Refs to CDs are to the Core Documents of the Inquiry

<sup>3</sup> CD 2.2

<sup>4</sup> CD 5.23, paragraph 48

22. Third, purpose 'c) *to assist in safeguarding the countryside from encroachment*'. There would be clear breach of this purpose because the site is a field in the countryside. Yes, its character is influenced by the adjacent development within Radlett. Yes, wider views from the rest of the Green Belt to the north, south and east are largely blocked by woodland. But by its nature the Green Belt consists predominantly of open countryside, including that part of it which directly abuts settlement boundaries. Green Belt policy seeks to preserve such countryside just as much as land within it that is not surrounded by settlements or built-up areas. If it did not there would be an inevitable incremental nibbling away of Green Belt fringes, which would cumulatively diminish its openness and permanence. That is why Green Belt policy has been such a successful planning tool since it was first introduced in 1947.
23. Arup's Green Belt Assessment Stage 1 for the ELP<sup>5</sup> assesses Hertsmere's Green Belt against the Green Belt purposes set out in the NPPF. The appeal site is the northern-most part of Parcel 30, which essentially comprises most of the gap between Radlett and Borehamwood. Although Parcel 30 scores moderately against purposes a) and b) and strongly against purpose c), the Stage 1 Assessment identifies scope for the sub-division of the appeal site itself because of its visual connection to the settlement edge of Radlett, being bound by the dense woodland to its south and east, and its relatively small scale thus making a limited contribution to purpose b).
24. As a result, the site was one of those taken forward for further consideration in the Stage 2 Green Belt Assessment. The site, RA-8 (SA-75), was not considered to meet purpose a) because it was not considered to be at the edge of a district built-up area; I have explained above why I disagree with that judgement. The Stage 2 Assessment concluded that the site performs moderately against purposes b) and c). I agree that it performs moderately against purpose b) because there would remain open gaps between Radlett, Shenley and Borehamwood following its development, but consider that it performs strongly against purpose c) because its development would clearly encroach upon the open countryside.
25. In any case, Arup's Green Belt Assessments were for a specific purpose, namely the evidence base to support the ELP. Some 80% of Hertsmere's area is Green Belt. Given the necessity in 2021 when the Regulation 18 ELP was consulted on, under the standard method for assessing housing in the area it was inevitable that sites in the Green Belt would have to be allocated for residential development. That is likely to still be the case today and when the Council progresses a new ELP, even though it decided to set aside the previous ELP in April 2022. It is nevertheless agreed between the parties that its supporting evidence base is a material consideration in this appeal.
26. The Assessment's (particularly its Stage 2) aim was to help identify the best land to take forward as housing allocations in the ELP based on the sites that scored lowest in terms of the Green Belt purposes. Hence, for the above reasons, the appeal site, named Site R3, was included as a housing allocation for around 195 new homes in the previous ELP.
27. However, it is agreed that the policies in the ELP – and therefore its allocations – carry no weight because they were set aside by the Council. Furthermore, the VSCs that need to be established to justify inappropriate development in the

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<sup>5</sup> CD 4.26, page 75

Green Belt as a windfall are distinct from the 'exceptional circumstances' required to change Green Belt boundaries in a local plan context.

28. The VSC test in NPPF paragraph 152 is a stricter test than the exceptional circumstances test in paragraph 145. That is well established by caselaw, because of the language in the NPPF itself and the different contexts in which these paragraphs appear in the NPPF.<sup>6</sup> It emphasises that because the fundamental aim of Green Belt policy is to keep land permanently open, the expectation is that Green Belt boundaries should only be reviewed or changed when plans are being prepared or updated, although the new NPPF wording makes clear that there is no requirement to do so. This reflects the primacy of the development plan for decision making as expressed in NPPF paragraph 12.
29. The appeal could of course be allowed, if the harm arising was clearly outweighed by the other considerations (the proposal's benefits) sufficient to constitute VSCs in this case without a change to the Green Belt boundary here, and I address this below. But Arup's Green Belt Assessments were carried out to satisfy the 'exceptional circumstances' test, which is essentially a wider strategic assessment of the whole of the Green Belt within the Borough, and not the stricter VSC test, which is not. So, whilst their conclusions are material, they are not determinative, and I have explained above my conclusions regarding the proposed development's harm to Green Belt purposes, which I consider exceed the harm set out in Arup's Assessment anyway.

#### *Conclusion on Green Belt Harm*

30. The proposed 8 Ha of built development would have a significant adverse effect on the Green Belt's openness, which would be a physical manifestation of its inappropriateness. In terms of the Green Belt purposes, the development would have a moderate adverse effect on purpose 'a) to check the unrestricted sprawl of large built-up areas'. It would have a moderate effect on purpose 'b) to prevent towns merging into one another', and a strong effect or impact on purpose 'c) to assist in safeguarding the countryside from encroachment'.
31. Whilst this significant effect on openness and adverse impact on Green Belt purposes may well be 'inevitable' (in the appellant's words) as a result of the inappropriate development of up to 195 homes and a new medical centre, such inevitability does not lessen its considerable harm to the Green Belt, to which I must give substantial weight.

#### *Landscape Issues*

32. The site has no landscape designation and is not a valued landscape in terms of NPPF paragraph 180 a). It is agreed between the main parties that there will be some adverse landscape effects arising from the development, although the extent of such harm is disputed. Visual effects are mainly confined to the properties overlooking the site, and it is agreed that they are not significant in landscape terms.
33. A principal issue between the parties' landscape witnesses results from their judgements concerning the site landscape's sensitivity to proposed development.

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<sup>6</sup> *R oao Luton Borough Council v Central Bedfordshire Council & Houghton Regis Development Consortium and Others* [2015] EWCA Civ 537; and *Compton Parish Council and Others v Guildford Borough Council and Others* [2019] 3242 (Admin)

34. The site is situated in local Landscape Character Area 21: High Canons Valleys and Ridges. In LUC's Hertsmere Landscape Sensitivity Assessment<sup>7</sup> the site falls within 21b, the Radlett Fringe, which includes the site and adjacent woodland belt as well as the land to the northeast of Radlett including Porter's Park Golf Club on the north side of Shenley Road/Hill. The Assessment concludes, in relation to 21b, that it has moderate sensitivity to 'low density' 2-2½ storey residential development and medium-high sensitivity to 'medium-density' mixed residential (houses and flats). The proposed development would therefore have at least a moderate effect on the site's overall landscape sensitivity according to this Assessment (since most of it would not be over 2½ storeys high), even when taking into account 21b's location on Radlett's urban edge and the enclosure provided by the woodland.
35. The site exhibits three of the main landscape characteristics of LCA21: its pastoral character/intact structure, its prominence to the settlement edge and its tree belts/plantations, which also surround it to the east; as such it is representative of LCA21's character.
36. GLVIA3<sup>8</sup> sets out that landscape sensitivity is a function of value and susceptibility. The appellant's Landscape and Visual Impact Assessment (LVIA)<sup>9</sup> considers the site to be of 'medium' value overall, with Theobald's Wood to be of 'medium to high' value because of its wildlife interest and contribution to local character, which was agreed by the Council's witness, Mr Radmall.
37. The LVIA sets out in its Methodology and Summary Landscape and Visual Effects (Appendix L) the landscape characteristics of the site and it is the effect of the proposed development on these characteristics that must be properly assessed. They are: within the site itself the woodland, individual trees, hedgerow and grassland; the overall site; and the surrounding area including the woodland in the Green Belt and the built-up area.
38. Landscape sensitivity is a combination of value and susceptibility of these characteristics. But whilst the LVIA provides agreed values for them, it does not identify their susceptibility and so it is unclear exactly how judgements have been made on their sensitivity.
39. Mr Radmall sets out his judgements of the susceptibility of the identified landscape receptors in paragraph 5.10 of his proof, all of which appear reasonable to me, and in 5.11 concludes on their sensitivity. He considers: hedgerows within the site to have a medium sensitivity, compared to low in the LVIA; grassland within the site to have a high sensitivity, compared to medium in the LVIA; and the overall site to have a medium to high sensitivity compared to medium to low in the LVIA. This would translate, at Year 1 following completion of the development, when multiplied by the magnitude of its change, to: substantial adverse effects on the grassland within the site and on the overall site itself, and moderate adverse effects on the hedgerows within the site (compared to only slight adverse as set out in the LVIA).
40. I am inclined to give these judgements more weight than those of the appellant, simply because Mr Radmall follows the guidelines for determining the sensitivity of these landscape receptors in accordance with established

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<sup>7</sup> CD 4.25

<sup>8</sup> Guidelines for Landscape and Visual Impact Assessment, 3<sup>rd</sup> edition (2013), paragraph 5.39

<sup>9</sup> CD 1.4

practice set out in GLVIA3, whilst the LVIA does not, or at least is unclear about this.

41. The appellant's landscape evidence in this regard, on the contrary, seems to be overly coloured by the site's relative containment by the woodland blocks and its influence by proximity to the housing on its western boundary. However, neither affects the site's intrinsic character as an open pastoral agricultural field, the character of which would be substantially adversely affected by the development. The majority of the site's boundary is with woodland and not with the urban built-up boundary, which only accounts for about a third of it.
42. Having walked through it at the site visit, the sense one gets of the site's character (apart from Theobalds's Wood) is of an open field in the countryside on the edge of the town's suburban streets, with the woods bordering to the east as a dominant backdrop. The houses and gardens are noticeable, but I disagree with Mr Self, the appellant's landscape witness, when he claims that the site has a '*stronger relationship to the residential area of Radlett than the wider countryside.*'<sup>10</sup>
43. The appellant's evidence is also influenced by the Outline Landscape Appraisals for Potential Development Sites in Hertsmere (also by LUC and dated October 2020)<sup>11</sup>, which concludes that Site 14 is of low sensitivity. For the above reasons, I disagree with its conclusions. I also disagree for the following additional reasons. Site 14 omits the wooded part of the appeal site, Theobald's Wood, despite it being the most valued part of the site in landscape terms. The settlement edge does not affect the intrinsic pastoral open character of this agricultural field; if it did this would have the potential to create, in Mr Radmall's words, 'a "*bow-wave*" of de-sensitized countryside adjacent to the settlement edge', defeating the aim of Green Belt purpose c), given that Green Belt, by definition, necessarily abuts settlement edges.
44. Additionally, I consider that the LVIA overplays the extent to which the proposed development's mitigation measures by new tree and shrub planting can prevent a landscape effect by Year 15 of the development. Yes, the site's hedgerows could be strengthened materially at Year 15. But the grassland that comprises the majority of the site will not be replaced and so can't be mitigated. Hence the intrinsic character of the site would remain at substantially adverse simply because it would no longer consist of countryside but of built urban development. In conclusion, there would be substantial adverse landscape effects on the site as a result of the permanent residential development on approximately 8 Ha of it.

#### Other Potential Harm

45. Aldenham Parish Council, the Rule 6 Party, object to the development on the ground that it would not respond positively to local townscape and landscape character, contrary to Policy HD3 of the Radlett Neighbourhood Development Plan (RNDP). In terms of townscape, it essentially argues that the scheme proposal will be too dense when compared to the low-density Radlett streets it will adjoin. I agree that the density will be higher, and the house plots smaller than those in Newberries Avenue and the other streets in this part of the town, but not significantly or adversely so such as to harm the character or

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<sup>10</sup> CD 7.6, paragraph 5.18

<sup>11</sup> LVIA, Appendix J



appearance of the area. There is also an expectation generally that modern densities should be maximised unless they are clearly contextually inappropriate. Consequently, no harm would arise in terms of the scheme's likely density or indicative plot sizes and no breach of Policy HD3 would occur.

46. The MP for the area and many local residents (over 1,300) object on the ground that the proposal would result in adverse highway capacity and road safety issues on Shenley Hill/Road. I walked from the site down Shenley Road/Hill to the train station and centre of town following my accompanied visit to the site so I could see the operation of this road in practice, obviously cognisant that it was in the summer holidays and traffic levels would likely to have been lower than in school term time and with more people at work.
47. The application was supported by a detailed Transport Assessment and a Stage 1 Road Safety Audit of the new junction onto Shenley Road. There was no objection to the scheme from HCC, the Highway Authority (HA), apart from in relation to detailed design matters which the main parties accept could be resolved at the reserved matters stage. I have no reason to doubt the HA's views on this. There would therefore be no unacceptable impact on highway safety and the residual cumulative impacts of the development on the road network would not be severe; the development would comply with NPPF paragraph 115 and is capable of complying with relevant development plan policies.
48. For these reasons there would be no other additional harm caused by the proposed development.

#### *The Benefits of the Proposal – the Other Considerations*

49. There is predominantly no dispute as to what the range of benefits are; what is disputed is the weight that each should attract. Mitigation of the effects of the development and measures that do no more than ensure compliance with development plan policies cannot be benefits.
50. The only disputed benefits are the range of low and zero carbon technologies (including air source heat pumps and solar PV panels) and water efficiency measures (low flow taps, dual flush toilets etc) set out in the appellant's Energy & Sustainability Statement<sup>12</sup>. The appellant states that these are 'capable of' achieving a significant – 77% - reduction in the Building Regs Part L 2021 CO<sub>2</sub> emission performance targets.
51. 'Capable of' is a rather vague term which implies that they may never actually occur, which is not altogether surprising given that this is an outline proposal and the new houses have not yet been designed. In any case, Hertsmere Local Plan Core Strategy (CS) Policy CS16 requires such energy and water efficiency measures in principle, notwithstanding that it does not set any targets for such. For these reasons these potential measures cannot be considered to be a benefit.
52. In terms of a scale of weighting as to the rest of the agreed benefits, I adopt the following scale in descending order of importance: very substantial, substantial, significant, moderate, limited, and very limited.

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<sup>12</sup> CD 1.16

### *Housing Supply*

53. The appellant submits that very substantial weight should be given to the 107 new market homes, whereas the Council gives significant weight to the contribution of the new 195 dwellings to housing supply. I assess this in terms of the contribution of these 195 units to HBC's overall housing supply.
54. Both parties agree that HBC cannot demonstrate a five-year housing land supply (5YHLS); there is currently only a 2.25-year supply, which represents a shortfall of 2,088 new homes based on the CS's requirements.
55. Given that 80% of HBC's area is Green Belt, it is inevitable that the new local plan will realistically have to allocate at least some Green Belt land for new greenfield housing development. There is no sign of a new draft plan coming forward, and I echo the words of the Inspector in the Little Bushey Lane appeal: I have little confidence at this point that the Council is moving forward effectively with efforts to meet local housing needs through the plan-led system, although maybe the revised NPPF will encourage it to do so soon.
56. Radlett in the third-tier settlement in the CS, after tier-one Borehamwood, and tier-two Potters Bar and Bushey. As such, and given the site's undisputed accessible location, when combined with the out-datedness of the CS's spatial strategy due the lack of a 5YHLS and the ELP's evidence base in terms of the Arup Green Belt Assessment, I can fully understand its allocation as a housing site in the former ELP, and potentially in a new local plan.
57. Where there is a chronic failure to deliver housing, as there is in Hertsmere, and there is no solution in the short or medium terms to remedying such a persistent shortfall<sup>13</sup>, the delivery of any new housing, even one dwelling, must be encouraged and considered to be an important priority, reflecting the Government's objective of significantly boosting the supply of homes a set out in NPPF paragraph 60.
58. Nonetheless, I acknowledge the Council's point that the greater the number of homes provided, the greater the benefit, in relation to addressing the Council's housing supply position. I accept this argument in the same way that I accept that built development of 8 Ha of open Green Belt land would have a commensurate harmful effect. I note the Inspector in the Harris Lane appeal<sup>14</sup> attributed significant weight to the provision of the 37 dwellings there, whilst the Little Bushey Lane Inspector<sup>15</sup> gave very substantial weight to the 310 dwellings proposed there, albeit I don't know the precise weighting scale that either adopted in coming to such conclusions. Equally in those cases the harm to the Green Belt was commensurate with the amount of Green Belt land lost to development.
59. More importantly in my judgement is the importance of the plan-led system, in particular as expressed in the Green Belt chapter of the NPPF, the difference between the exceptional circumstances test for reviewing Green Belt boundaries as part of a new local plan and the stricter VSC test for development management purposes. This difference has been re-affirmed in the revised NPPF.

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<sup>13</sup> Including the lack of any housing allocations in the Radlett Neighbourhood Development Plan

<sup>14</sup> CD 5.18

<sup>15</sup> CD 5.23 Ibid

60. Taking all these points into account, I consider that *substantial weight* should be attributed to the proposed 195 new homes.

#### *Affordable Housing*

61. Up to 88 affordable homes will be secured if I allow this appeal, via the S106. The appellant gives very substantial weight to this, whereas the Council gives significant weight. The Inspector in the Harris Lane appeal said that the 15 affordable housing (AH) units there (where again the proposal was 5% in excess of the policy requirement) '*weighs significantly in favour of the appeal*'. I'm not sure that equates to the Council's judgement here of significant weight in terms of my above weighting scale, although again I accept the general proposition that more AH units should in principle carry more weight.
62. However, it is commonly accepted that AH should be given at least substantial weight, because most AH units are delivered on the back of schemes for new market housing, as is occurring here.
63. Moreover, the delivery of AH in Hertsmere has been woefully inadequate, mainly for exactly this reason: the general chronic failure to deliver market housing. The 2016 Strategic Housing Market Assessment (SHMA) identifies a need for 434 AH dwellings a year between 2013 and 2036 and the recent Local Housing Needs Assessment (LHNA) identifies a higher need of 503 AH dwellings a year between 2020 and 2036, a total of 8,048 dwellings over the 16-year period. Since 2013/14 AH completions have averaged 54 net AH dwellings, resulting in an accumulated shortfall of -3,418 AH units between 2013/14 and 2021/22, or -380 AH units per year. Against the LHNA target a significant shortfall of -874 AH units has arisen in just two years. By any stretch of the imagination, that is a serious shortfall. The Council did not challenge any of Mr Stacey's evidence for the appellant.
64. I accept that such a serious shortfall to provide AH units has serious real-world effects, which impact by definition on the poorest and neediest families in the Borough. The effect of poor housing on children has a serious effect on their educational attainment, which in turn perpetuates the cycle of built-in poverty and poor life prospects.
65. Accordingly, and in the context of net annual delivery figures of only 54 AH units over the last ten years in HBC, I give *very substantial weight* to this benefit.

#### *The School Expansion Land*

66. The ELP included provision of land in the site's allocation for the expansion of Newberries Primary School; Site R3 required land to facilitate a one form entry (1fe) expansion of the school. The parties agree that the grey land on the Parameters Plan, the land that would be gifted to Hertfordshire County Council (the education authority, HCC) via the S106, would constitute both mitigation and benefit for the reasons set out below.
67. The development would obviously be occupied by families with children who would require schooling and at least some of these children would be likely to attend the adjacent Newberries Primary School; indeed 13 school places are indicated by HCC, although faith schools in the area attract a large draw. The proposed safeguarded land would enable a 1fe expansion providing up to 210

additional school places. So, whilst such land would be mitigation, it would in principle be mainly a benefit.

68. The appellant argues that this benefit should be afforded moderate weight because it will future proof the expansion of the school, which whilst not necessarily needed now, will be in the future.
69. The Council says that very limited weight should be afforded to this benefit. The appellant's evidence indicates that the Primary School is only at 90% capacity and that, with a buffer of 5-10% in capacity there is only a need of 0.5fe expansion. But population projections are actually projected to decline past 2026/27 until 2036, as acknowledged by Mr Thurley. HCC's view is that new school places may be required here but this will depend on the delivery of other sites in Radlett as well as the demand and availability of school places in faith schools.
70. For these reasons this benefit is only a potential benefit for a currently non-existent requirement, and that would only be so if the school decides to expand within the 10-year period open to it to take up the option of the land in the S106. Nonetheless, if expansion was required within that period, the benefit would be taken up. Accordingly, I consider *limited weight* should be attached to this benefit.

#### *The New Medical Centre*

71. Schedule 3 of the S106 provides for a building of up to 750m<sup>2</sup> of healthcare floorspace (Use Class E(e)) to be transferred for the nominal sum of £1 to the Red House Surgery, the shell and core of which to be completed to an agreed specification with the Council prior to occupation of 70% of the dwellings. Both parties agree that this is a benefit in addition to comprising mitigation to address the general medical needs of the proposed development's residents. The appellant says substantial weight should be attracted to this benefit, whereas the Council says limited weight.
72. Allocated Site R3 in the set-aside ELP stated that the new development should: '*Reserve land for any required future relocation of the Red Houses surgery, should an alternative site in the centre of Radlett not be identified*'. In terms of when a new surgery might be needed in Radlett, it is stated on page 38: '*Demand for a new facility will be kept under review with consideration being given to the level of need generated towards the end of the plan period and any additional demand from development within St Albans district*'. The ELP was to cover the period ending in 2038. The recent letter from the Hertfordshire and West Essex Integrated Care Board<sup>16</sup> highlighted that its predecessor ICB had identified the need for a new primary healthcare facility in Radlett towards the end of the ELP period due to existing physical capacity constraints at the existing Red House Surgery building.
73. The recent letter from the GP Partners at the Red House Surgery<sup>17</sup> confirms that the current building has reached the limits of expansion; has been functioning at full capacity for a number of years; and has seen a rapid increase in workload arising from a growing, ageing and co-morbid population as well as increasing medical work being shifted from secondary to primary care by locating Allied Healthcare Professionals (such as physios, paramedics

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<sup>16</sup> IQ 2

<sup>17</sup> IQ 1

and clinical pharmacists) into General Practice. The Surgery's Partners state that the provision of the purpose-built new surgery on the appeal site is *'the only viable solution to significantly enhance healthcare in Radlett and meet the needs of the population, both current and future...'*. They set out nine substantive benefits of the new surgery facility in the letter, all of which I agree are important in order to improve primary care facilities in Radlett.

74. The Partners also say that they would have reservations about an alternative financial contribution to the ICB as this would only be an incremental contribution directly attributable to the demand from the proposed development and would not be of a sufficient magnitude to properly enhance healthcare in Radlett. They also say that there is no funding available with which to acquire a suggested site themselves or to fit out a new medical facility.
75. Policy RV2 of the RNDP<sup>18</sup> states that medical services should be located in the centre of Radlett unless it can be demonstrated that there are no viable and deliverable sites, in which case provision elsewhere in the settlement will be supported. I heard the benefits of the Red House Surgery's (the only GP Surgery in Radlett) central location from several local residents at the Inquiry, including some of those responsible for writing the RNDP. The benefits of the generous amount of car parking for patients at the proposed new surgery should be balanced against the considerably better accessibility by walking and cycling that its existing surgery in the town/village centre occupies for a greater percentage of its local users.
76. RNDP paragraph 3.66 acknowledges that the existing surgery building will be at capacity in less than 10 years (from the making of the Plan in 2021). The appellant claims there are no viable and deliverable sites in Radlett's centre. In terms of the four central sites identified in the RNDP's Appendix, I agree that Locations A and C are not realistic alternative sites for a new surgery. Location B, Newberries Car Park, is also potentially problematic because it lies partly with Flood Zone 3 and is not likely to be developable for 16 years.
77. In terms of the Post Office building immediately next to the existing surgery, I acknowledge that it is locally listed and adjacent to the Conservation Area, which would indicate a policy presumption for its retention, meaning that it may have to be converted rather than the building demolished and the site redeveloped with a new surgery building. But, aside from the current lack of funding available to purchase and convert it, I am not convinced that it should be ruled out as a potential expansion site for the existing surgery for the simple reason that it is located adjacent to it right in the middle of the town centre, which of course provides shops including two pharmacies on the other side of Watling Street.
78. Whilst there is no identified funding available now for a new surgery in the town centre or anywhere else, the ICB's strategic role is to provide for the primary healthcare needs of its area so if a new surgery was not offered by a developer, it would inevitably have to secure such funding from within NHS budgets within 10 years or so.
79. Against the ICB's strategic role is balanced the delivery of the shell and core of a new surgery facility simultaneously with the new dwellings on the site. In

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<sup>18</sup> CD 3.11, page 57

principle such a benefit is important. However, the Surgery's GP Partners admit that there is currently no funding to fit out a new medical facility. It is unclear whether they have or could raise the funds themselves to fit out a 750m<sup>2</sup> medical facility that would only be completed to shell and core, or whether the ICB could contribute such funds given the provision of a new core surgery building at zero expense to the NHS.

80. The Council point out that the S106 gifts the new surgery to the three households who own the Red House GP Surgery, which could enrich them considerably, especially if they were to mortgage the facility, sell the land and retire or rent it out to a new GP consortium. There is nothing in the S106 obligation to prevent any of these situations occurring, albeit I do not consider any of them to be likely given the Partners' wish expressed in their letter to meet the needs of patients and future proof the surgery as the community continues to grow and its health needs increase.
81. If any of these scenarios were to occur, the appellant points out that the S106 obligation would still deliver a new expanded and improved GP Surgery for the town. Whilst the S106 would facilitate that, some of the benefits of the new facility – in particular the fact that it is rent- and service charge-free – may not apply if it was rented by the Partners to another GP consortium. I also note that Clause 2 of Schedule 3 of the S106 allows the developer to use the facility for an alternative use after 10 years should it not be used as for Class E(e) or an alternative NHS use.
82. Drawing all these strands of this benefit together, I accept that the building of a new health facility of up to 750m<sup>2</sup> to shell and core would be an important benefit. But it would not be in the centre of Radlett and I am not convinced that the adjacent PO, or indeed some other potential site nearer to Radlett town/village centre, would not be available within the next 10 years. It is also unclear, given the Partners expressed stance in their letter, exactly how the fit-out of the new medical facility will be funded.
83. For these reasons I consider that *moderate weight* should be given to this benefit.

#### *Radlett Plantation RIGS – The Puddingstone*

84. Schedule 6 of the S106 provides the potential to increase the size and quality of the rare Puddingstone exposure and its surrounding geological sequence in the retained site within Newberries Wood, which comprises the Radlett Plantation Regionally Important Geological Site (RIGS). It would do so by a Management Plan to be agreed with the Council, in consultation with the Hertfordshire Geological Society, which sets out a range of measures through appropriate excavation work and ensuring a secured means of access to enable this to occur. The appellant attaches moderate weight to this benefit, acknowledging its specialist or 'niche' nature.
85. I agree this would secure geological benefits that do not currently exist. But the site itself encompasses the Radlett Field RIGS. There are no current exposures of soil or Puddingstone on the site because the field has not been ploughed for some time (giving it an unfavourable status) and it was agreed with the Geological Society at the time that the Radlett Field RIGS would be delisted and there was no objection to the development of the site on the basis

that access would be allowed onto the adjacent Radlett Plantation RIGS for conservation purposes.

86. However, the Council rightly points out that the development of the majority of the field for roads and buildings would make permanent the Field RIGS's current unfavourable status in that no more Puddingstone could be exposed by future agricultural ploughing and would negate any possible improvement in its geo-conservation status in the future. Consequently, I give the benefit of the works to the Plantation RIGS only *limited weight*, when taking into account the 'niche' nature of such a benefit anyway.

#### *Biodiversity Net Gain (BNG)*

87. The Regulations for introducing a mandatory 10% biodiversity net gain are about to take effect, but the BNG in the proposal would be a minimum of 20%, and so must be a benefit. This would be delivered by sowing an arable field (3.64 Ha) situated 870m to the southeast of the appeal site with a wildflower grass seed mix to create a total of not less than 19 native species, which the appellant would be obliged to do through Schedule 4 of the S106. The appellant says that this should be given significant weight on the basis of the previous appeal decisions at Clappers Lane<sup>19</sup> (moderate weight) and Little Chalfont<sup>20</sup> (substantial weight).
88. In contrast, the Council says it should be given limited weight, because the Burston Nurseries appeal decision<sup>21</sup>, where the BNG was much greater, only gave it moderate weight.
89. I accept that the weight afforded to BNG in any particular case should reflect the extent to which it exceeds what will very shortly be a legal requirement to provide, a minimum of 10%.
90. The Little Chalfont decision, where BNG was also 20%, gave it substantial weight, although there is no explanation why. The Clappers Lane decision, where the BNG was capable of being above 10%, gave it moderate weight. Again, there is no explanation why. In the Burston Nurseries decision, where BNG was over 137% for habitats and over 7,600% for hedgerows, it was given moderate weight, again with no explanation.
91. Given the considerable range of betterment that BNG can and regularly does deliver, as set out in the examples above, I consider that the mere doubling of the BNG percentage in this case above what will very soon be the legal requirement, is a fairly modest BNG. Consequently, I afford it only *limited weight*.

#### *Accessibility/Transport Initiatives*

92. Appropriate conditions have been agreed between the main parties that would deliver the following accessibility and public transport improvements to the site for residents and visitors: new pedestrian and cycle access points to Theobald Street, Shenley Road and Williams Way; new bus stops and pedestrian crossings on the main roads and new cycle lanes.

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<sup>19</sup> CD 5.17

<sup>20</sup> CD 5.14

<sup>21</sup> CD 5.22

93. Although some of these measures will benefit those who will not live on or visit the site, these initiatives are a direct requirement (and have only been provided because of) the development, and hence predominantly comprise mitigation. Consequently, I give any such benefits *very limited weight*.

#### *Economic Benefits*

94. I accept, as does the Council, that the proposed development will deliver a number of economic benefits. Namely the provision of construction related jobs, increased spend in the vicinity by new residents and increased tax receipt for the Council, all as set out by Mr Thurley in his evidence.

95. I acknowledge NPPF paragraph 85, which states that significant weight should be placed on the need to support economic growth and productivity. But that does not mean that such economic benefits should always be afforded significant weight in any particular case, despite the Inspectors in the Little Bushey Lane, Clappers Lane and Yatton<sup>22</sup> appeals deciding that they did in those cases.

96. Rather, that very much depends on all the circumstances of the case. To my mind, lesser weight should attach to such benefits where the location of new development is fundamentally contrary to national and local policy, as it is here, because the aim of the plan-led system is to deliver sustainable development.

97. The fact that the spatial strategy in the CS is out-of-date due to the lack of a 5YHLS does not negate its soundness and compliance with the NPPF as a whole. Economic growth and productivity, the economic objective of sustainable development, does not necessarily trump environmental objectives. Whilst 80% of Hertsmere is Green Belt and housing development on some of it may well be inevitable, exactly where such development should occur, and the economic benefits that would attach to it are a matter for the new local plan.

98. For these reasons I attach only *limited weight* to the economic benefits.

#### *Conclusion on Benefits*

99. In conclusion, I give *substantial weight* to housing supply, *very substantial weight* to the AH, *moderate weight* to the new surgery facility, *limited weight* to the school expansion land, the RIGS Plantation enhancement, BNG and the economic benefits, and *very limited weight* to the transport initiatives.

#### *The Planning Balance and Overall Conclusion*

100. Regarding harm, the development would have a significant adverse effect on Green Belt openness, which would be a physical manifestation of its inappropriateness, a moderate adverse effect on Green Belt purposes a) and b), and a strong effect on purpose c). I must give this Green Belt harm substantial weight, as mandated by the NPPF.

101. Added to this harm to the Green Belt there would be substantial adverse landscape effects on the character and appearance of the area as a result of the permanent residential development on approximately 8 Ha of the site.

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<sup>22</sup> CD 5.16



102. Regarding the other considerations, the benefits of the proposal to be balanced against such harm, these are weighted as follows: *substantial weight* to housing supply, *very substantial weight* to the AH, *moderate weight* to the new surgery facility, *limited weight* to the school expansion land, the RIGS Plantation enhancement, BNG and the economic benefits, and *very limited weight* to the transport initiatives.
103. Having regard to these benefits, they do not clearly outweigh the overall significant harm to the Green Belt and the substantial adverse landscape effects on the character and appearance of the area. I have explained above my conclusions on the benefits with regard to my weighting scale set out above. Whilst these are of course a matter of judgement, I would add that, even if greater weight was to be attributed to some of these benefits – for instance if I had given *significant weight* to the new health facility and to the economic benefits – the totality of these other considerations would still not clearly outweigh the overall harm that the development would cause.
104. Consequently, the VSCs necessary to justify the proposed development do not exist. In making this judgement I am aware that the benefits, either individually or in total do not need to be ‘very special’ or even ‘special’. But they do in total need to clearly outweigh the overall harm, which they do not in this case.
105. The development would therefore conflict with CS Policy SP1, which seeks to avoid inappropriate development in the Green Belt; with Policy CS2, because the NPPF seeks to restrict such proposals; with CS13, which merely repeats current national Green Belt policy; and with Policy SADM26 (iv) of the Site Allocations and Development Management Policies Plan because the development would harm landscape setting and Green Belt openness.
106. In terms of Policy SP2 and the application of NPPF paragraph 11, whilst the CS’s spatial strategy policies are outdated because of the lack of a 5YHLS, sub-para d) i) and Footnote 7 kicks in. Permission should be granted unless ‘*the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed*’. Footnote 7 list these policies, which include those relating to land designated as Green Belt, that the proposed development fails to comply with and is therefore a clear reason for refusal. Consequently, by definition, the proposal would not constitute sustainable development and should be refused.

*Nick Fagan*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT: *Jonathon Easton KC*, Kings Chambers, called the following witnesses:

- Clive Self, Managing Director, CSA Environmental – Landscape
- Philip Allin, Director, Boyer Planning – Planning & Balance
- Luke Thurley, Associate, Volterra Partners LLP – Socio-economic benefits
- Dr Andrew Buroni, Director of Health and Social Impact Assessment, Savills – Health benefits
- Philip Hamshaw, Partner, i-Transport LLP – Highways & Transport
- James Stacey, Tetlow King Planning – Affordable Housing

FOR THE LOCAL PLANNING AUTHORITY: *Josef Cannon (now KC) and Olivia Davies*, Cornerstone Barristers, called the following witnesses:

- Peter Radmall, Landscape
- Emily Stafford, Planning & Balance

FOR THE RULE 6 PARTY (Aldenham Parish Council): *Ben Du Feu*, Cornerstone Barristers, called:

- Valerie Scott

INTERESTED PARTIES (local residents):

- Estelle Samuelson, Chair of RNDP Steering Group
- Cllr John Graham, on behalf of Cllr Lucy Selby, Ward Cllr
- Alison Rubinson, including on behalf of local residents
- Graham Taylor, immediate neighbour to the site
- John Whiting, Vice-Chair of Radlett & Green Belt Society
- Lawrence Mellman, owner & resident of Buckfield
- Speaker on behalf of Trevor & Molly Barton
- Stephen Balsom
- Alfred Boyden
- Stephen Rose
- Stephen Balsom on behalf of Stephen Newton, (98 year old) local resident
- Joey Ziff
- Don Glazer
- Stephen Balsom on behalf of September Beck, Manager of Manor House Pharmacy
- Dr Fernando
- Christopher Langdon
- Leslie Johnson, local resident & walker
- Ian Robins
- Monica Stern
- Rosemary Gilligan, Chair of Shenley Parish Council

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*End of Appearances*

## **DOCUMENTS submitted at (or after) the Inquiry**

1. Letter from the 4 GP Partners at The Red House Surgery dated 14 August 2023
2. Letter from the Town Planning Policy Manager at the NHS Hertfordshire and West Essex Integrated Care Board (ICB) dated 21 August 2023
3. Opening Points on behalf of Appellant
4. Opening Statement on behalf of the Local Planning Authority (LPA)
5. Opening Submissions on behalf of Aldenham Parish Council, the Rule 6 Party
6. Comments from Estelle Samuelson
7. Comments from Cllr Lucy Selby
8. Comments from Alison Rubinson
9. Comments from Graham Taylor
10. Comments from John Whiting
11. Comments from Lawrence Mellman
12. Comments from Trevor & Molly Barton
13. Comments from Alfred Boyden
14. Comments from Stephen Rose
15. Comments from Christopher Newton
16. Comments from Joey Ziff
17. Comments from Don Glazer
18. Comments from Dr Fernando
19. Comments from Christopher Langdon
20. Comments from Leslie Johnson
21. Comments from Ian Robins
22. Comments from Monica Stern
23. Comments from Rosemary Gilligan
24. Summary of the S106 received 3 October 2023
25. Signed S106 Unilateral Undertaking dated 2 November 2023
26. List of final agreed conditions received 19 October 2023
27. Closings Submissions on behalf of the LPA
28. Closings Submissions on behalf of Aldenham Parish Council
29. Closings Submissions on behalf of the Appellant
30. Response on behalf of Appellant to LPA's & Rule 6 Party's Closing Submissions
31. Appellant's comments regarding revised NPPF dated 8 January 2024
32. LPA's comments regarding revised NPPF dated 8 January 2024
33. Rule 6 Party's comments regarding revised NPPF dated 8 January 2024

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*End of Documents*