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## Appeal Decision

Inquiry held on 6 – 8 and 13 February 2024<sup>1</sup>

Accompanied site visit made on 5 February 2024<sup>2</sup>

**by David M H Rose BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25<sup>th</sup> March 2024**

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**Appeal Reference: APP/N1920/W/23/3329947**

**Land lying to the east of Hartfield Avenue and fronting on to Barnet Lane, Elstree, Hertfordshire**

- 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 Hawridge Strategic Land Limited against the decision of Hertsmere Borough Council.
  - The application Reference 23/0053/OUT, dated 22 December 2022, was refused by notice dated 24 April 2023.
  - The development proposed is 'Residential development of up to 74 dwellings, with associated landscaping, amenity space, Self-Build plots, sustainable urban drainage (SuDs), and associated works. (Outline Application to include Access, with all other matters Reserved)<sup>3</sup>.
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### Decision

1. The appeal is allowed, and planning permission is granted, for Residential development of up to 74 dwellings, with associated landscaping, amenity space, Self-Build plots, sustainable urban drainage (SuDs), and associated works. (Outline Application to include Access, with all other matters Reserved) at Land lying to the east of Hartfield Avenue and fronting on to Barnet Lane, Elstree, Hertfordshire in accordance with the terms of the application, Reference 23/0053/OUT, dated 22 December 2022 subject to the conditions set out in the Schedule to this decision.

### Preliminary Matters

#### (i) The application

2. The application is made in outline with all matters, except for means of access, reserved for subsequent approval. Access details are shown on Drawing reference: 173629/A/06. The site location plan is SLP 01 Rev A.
3. Prior to the Inquiry, a simplified Land Use Parameter Plan, LUPP-01 Rev D, was submitted and was the subject of re-consultation. There is nothing to suggest that the revised plan has amounted to a fundamental change to the application, and I am satisfied that its consideration by way of substitution would not result in procedural unfairness.

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<sup>1</sup> The final day of the Inquiry was conducted remotely on the 'Teams' platform

<sup>2</sup> I also made an unaccompanied visit to the locality on the morning of Friday 9 February 2024

<sup>3</sup> The description of development is taken from the Council's decision notice and that adopted by the Appellant

4. The Site Layout Drawing (ISL.01 Rev C), other supporting drawings and the Design and Access Statement illustrate how the site might be developed.
  5. The Council's decision to refuse planning permission sets out three reasons for refusal which are summarised below:
    - (1) the proposal is inappropriate development in the Green Belt; the claimed benefits are insufficient to outweigh the harm to the Green Belt by virtue of inappropriateness, harm to openness and Green Belt purposes; and other harm arising to flood risk, biodiversity, protected species and character and appearance;
    - (2) inadequate information on protected species; loss of habitat within the Elstree Tunnel Local Wildlife Site and biodiversity net loss;
    - (3) insufficient information relating to flood risk and drainage.
  6. As a result of further information submitted after the decision to refuse planning permission, the Council accepts that the Ecological Technical Note (September 2023)<sup>4</sup> provides sufficient information on protected species and there is no residual concern that could not be met by planning conditions.
  7. On flooding and drainage, an Addendum Flood Risk Assessment and Drainage Strategy Revision A (September 2023), has provided the basis for the Council to confirm that it is not pursuing reason three, subject to the imposition of planning conditions. Full details are provided in the topic specific Statement of Common Ground.
  8. It is common ground that the proposal would represent inappropriate development in the Green Belt as defined in Policy CS13 of the Core Strategy<sup>5</sup> and the National Planning Policy Framework<sup>6</sup>. I agree.
  9. The parties also agree that as the site is located wholly within the Green Belt, and the development comprises inappropriate development, the presumption in favour of sustainable development in paragraph 11 d) i. of the Framework would not be engaged, unless very special circumstances can be demonstrated.
- (ii) Hertsmere Local Plan – Regulation 18 Draft Local Plan**
10. At a meeting held on 20 March 2024, the Council resolved to publish the Regulation 18 Draft Local Plan for public and stakeholder engagement. The appeal site is included as a draft allocation as it was in the set-aside draft Local Plan. At that stage 11,372 objections were received to its allocation.
  11. The Council anticipates a large number of responses to the new Regulation 18 Plan consultation and considers it likely that there will be a number of objections relating to the draft site allocations that will need to be considered and resolved. The Council acknowledges that only very limited weight can be given to the Regulation 18 Plan. To my mind it has minimal weight, at best, as it awaits consultation.
  12. However, it is important to note that whilst the site boundary of the draft allocation coincides with the red line boundary of the appeal scheme, the 'Indicative Developable Area' excludes the north-eastern parcel of the site which is within the designated Elstree Tunnels Grasslands Local Wildlife Site.

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<sup>4</sup> CD06.2

<sup>5</sup> Hertsmere Local Plan Development Plan Document Core Strategy Adopted January 2013

<sup>6</sup> Hereafter referred to as the Framework

13. Council officers consider the appeal scheme to be inconsistent with the draft allocation due to the inclusion of development (for example, the attenuation basin) within the non-developable part of the site. I return to this in my consideration of the main issues.
- (iii) The section 106 Agreement**
14. The section 106 Agreement, dated 12 March 2024, was submitted after the close of the Inquiry in accordance with an extended timescale<sup>7</sup>. The parties to the Agreement are Hertsmere Borough Council, Hertfordshire County Council, the landowners and the Appellant. The latter has the benefit of an option(s) to acquire the site.
15. The Agreement includes, in short:
- 1) Affordable Housing (45%) comprising 70% Social Rented Housing, 25% First Homes, and 5% Shared Ownership; and not less than 5% of the total number of dwellings to be Custom/Self Build Dwellings (Schedule 1).
  - 2) Biodiversity net gain comprising agreement on the biodiversity baseline of the site; a Biodiversity Plan to secure a net gain of at least 20%; subsequent management and maintenance arrangements; demonstration of a local first approach or, failing such, a locational hierarchy (Schedule 2).
  - 3) Health Infrastructure Contribution (£98,192.00) to increase local clinical space and level of patient access (named facilities); and a Health Services Contribution (£28,189.00) to be directed to East of England Ambulance Service for the improvement of local health service capability (Schedule 3).
  - 4) Travel Plan and Travel Plan Contribution (£6,000.00) for monitoring; and Active Travel Contribution (£6,826.00 per dwelling) towards active travel measures identified in the South West Herts Growth Transport Plan (Schedule 4).
  - 5) Performance by the respective Councils; Disputes; and Proforma (Schedules 5 – 8).
16. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended)<sup>8</sup> and paragraph 57 of the Framework state that planning obligations should only be sought where they are:
- a) necessary to make the development acceptable in planning terms;
  - b) directly related to the development; and
  - c) fairly and reasonably related in scale and kind to the development.
17. Looking at each of the obligations, the Appellant's offer to provide 45% affordable housing exceeds the minimum of 35% required by Core Strategy Policy CS4. It is directed at a particular need, and I am satisfied that it meets the relevant tests.

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<sup>7</sup> ID24

<sup>8</sup> Hereafter referred to as CIL

18. Although there is no Development Plan policy stipulation for self-build and custom housebuilding, local authorities have legal duties under the Self Build and Custom Housebuilding Act 2015. Paragraph 63 of the Framework, in setting out the various groups likely to require housing, includes people wishing to commission or build their own homes. The tests would be met.
19. Core Strategy Policy CS12 requires development proposals to conserve or enhance biodiversity and habitats and Policy SADM10<sup>9</sup> requires adequate mitigation or compensatory measures where harm to a local wildlife site cannot be avoided. The Council also refer to its Biodiversity Net Gain SPD 2024. The Framework provides related guidance on conserving and enhancing the natural environment at paragraph 180 d) and paragraph 186.
20. The Appellant has offered a net gain of 20%. This exceeds any policy or legislative requirement and is to be considered against the harm to the Green Belt by reason of inappropriateness, and any other harm, in the overall balance required by paragraph 153 of the Framework. In the event of a positive outcome, that included weight to the obligation, the tests would be fulfilled.
21. The Health Infrastructure Contribution, to increase patient capacity at one of two named surgeries is supported by a calculation of the likely level of demand arising from the development and the level of contribution to secure mitigation. This appears justified and would accord with the relevant tests.
22. Moving on to the Health Services Contribution, correspondence confirms that it is anticipated that the proposed development would generate some '*..... 40 additional calls per annum on already constrained ambulance services which will require premises reconfiguration, extension, or re-location, need for additional ambulance vehicle provision and clinical capacity to deliver timely emergency ambulance services*'<sup>10</sup>.
23. Although it is said that the monies sought would be directed to one or more of the three locations that would serve the site, the request for funding is expressed in very general terms, setting out various options rather than specific projects. Moreover, the definition of the covenant in Schedule 3 is expressed as '*.....including the provision of new equipment and recruitment and training and delivery*'.
24. Whilst the Appellant has not resisted the contribution, I am not satisfied that I have sufficient quantified justification to enable me to conclude that the Health Services Contribution meets the relevant tests. It cannot therefore constitute a reason for granting planning permission.
25. In light of paragraph 4.2 of the section 106 Agreement, the obligation is not a material consideration, it is incompatible with Regulation 122 and no weight is attached to that obligation in determining the appeal.
26. Accordingly, the Health Services Contribution obligation '*shall cease to have effect and the Owner shall not be required to comply with that obligation .....*'.
27. Finally, the travel related contributions are aimed at wider sustainable and active travel opportunities to encourage modal shift away from the car. This would be consistent with Core Strategy Policies SP1 and CS26 and paragraph 114 a) of the Framework. They are therefore justified.

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<sup>9</sup> Sites Allocations and Development Management Policies Plan

<sup>10</sup> Email from East of England Ambulance Service dated 20 December 2023

## Main Issues

28. The main issues identified at the opening of the Inquiry were:
- 1) The effect of the proposal on the openness of the Green Belt and its purposes (purposes a) – c) as defined in the Framework).
  - 2) The effect of the proposal on the character and appearance of the area.
  - 3) The effect of the proposal on the grassland habitat within the Elstree Tunnel Local Wildlife Site and the appropriateness of the proposed measures to secure biodiversity net gain.
  - 4) The degree and implications of the shortfall in the five-year housing land supply, including consideration of affordable housing and self-build plots.
  - 5) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

### Issue One:

#### **The effect of the proposal on the openness of the Green Belt and its purposes (Purposes a) – c) as defined in the Framework)**

##### **(i) Green Belt Policy**

29. Paragraph 142 of the Framework indicates that *'The Government attaches great importance to Green Belts. 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'*.
30. Paragraphs 152 and 153 confirm that *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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'*.
31. In turn, Planning Practice Guidance: Green Belt explains that when assessing the impact of the proposal on the openness of the Green Belt it may be relevant to consider the spatial and visual aspects of openness; the duration of the development; and the degree of activity likely to be generated.

##### **(ii) Green Belt Openness**

32. The Appellant accepts that, in spatial terms, harm to openness would be an inevitable consequence of developing the appeal site as there would be built form where currently there is none. It acknowledges that the harm would be significant. Indeed, spatial openness would be lost to an expansion of the settlement, the duration would be long-lasting, and the dwellings would bring related activity from its residents.
33. In terms of visual openness, the Appellant's premise of moderate harm is based on *'the visual effects of the appeal proposal would be localised and limited ..... the appeal site is an enclosed site, characterised by existing built form (within and adjacent) and urbanising elements, which is seen by relatively few receptors in close proximity to it'*.

34. I acknowledge that there is no public access to the site and, for the most part, it has generally well-defined boundaries with dwellings to the north and west and Barnet Lane to the south. The three fields in question are principally devoid of development, save for a few incidental structures, consistent with the grazing of horses and hobby use.
35. In turn, there is dense tree cover, associated with Elstree Tunnel, to the northern and eastern boundaries of the Local Wildlife Site within the site. To the east of the southern parcel proposed for built development, the adjoining open field is reinforced to the east by the continuation of the woodland belt. The southern boundary with Barnet Lane is tree-lined and glimpsed views, into the site and on the opposite side of the road, reinforce visual openness.
36. Whilst the western and northern edges of the two fields proposed for built development are adjoined by residential curtilages, moderate to good natural screening relegates the presence of the settlement edge. To my mind, the visual openness of the appeal site is strong, and the loss of visual openness would be significant.
37. Taking the spatial and visual components of openness together, I conclude that the harm would be significant.

**(iii) Green Belt Purposes**

**Purpose a) to check the unrestricted sprawl of large built-up areas**

38. The Hertsmere Green Belt Assessment Stage 2<sup>11</sup>, prepared independently for the Council as part of the evidence base to support the set aside review of the Hertsmere Local Plan, and relied on for the new Regulation 18 Plan, is a useful starting point. The appeal site was identified as performing weakly against Purpose a), along with land immediately to the east, '..... as enclosed within the large built-up area of Borehamwood, and therefore do little to prevent sprawl'.
39. The Appellant reaches a similar conclusion on the basis that the appeal site has a defensible boundary and because it, and the neighbouring land, forms a small enclave of Green Belt to the north of Barnet Lane that is physically separated from the wider Green Belt to the south.
40. Nonetheless, in my opinion, the appeal site, as a marked indent into the built-up area, plays a role in giving status to the wider Green Belt and continuity of openness. Its loss to development and the outward expansion of the settlement, simply on the basis of moving towards another boundary, would conflict with Purpose a) to a moderate degree.

**Purpose b) to prevent neighbouring towns merging into one another**

41. The appeal site, in the Stage 2 study, was one of the areas which performed weakly against this purpose as a result of limited scale, or as a result of physical or topographical features which restricted the potential for coalescence. Both parties agree that the site makes a weak contribution to this purpose.
42. Although the intervening distance from the southernmost tip of Borehamwood towards Edgware would not be diminished, the distance is not constant due to the irregular form of the settlement edge. There would be a reduction in separation, at least in part, albeit the effect on Purpose b) would be very limited at most.

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<sup>11</sup> CD14.2



**Purpose c) to assist in safeguarding the countryside from encroachment**

43. The Stage 2 study identified the appeal site as one of twenty-seven sub-areas scoring moderately against this purpose. It is evident that there was some considerable variation depending on their degree of rural character and urban influences.
44. In my opinion, as set out above, despite the proximity of the settlement edge, the appeal site is perceived functionally as part of the open countryside rather than integral to, or dominated by, the near presence of the built-up area. The extent of the proposed development, and its inevitable suburban character, would counter the objective of safeguarding the countryside from encroachment. The effect on Purpose c) would be significant.

**(iv) Green Belt Conclusion**

45. Returning to the Framework, and drawing together the threads above, substantial harm would arise from inappropriateness, significant loss of openness and conflict with three of the five purposes of Green Belt to varying degrees. Substantial weight is to be given to any harm to the Green Belt.

**Issue Two:**

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

46. Looking first at landscape character effects, the appeal site is located in Landscape Character Area 23 described as '*An area never very far from the impact or presence of built development even though it is generally contained behind and among vegetation. A marked and well-treed ridge line forms the spine of the area. Pasture with some over-grazing .....'*
47. Key Characteristics include '*prominent ridgeline that runs east/west; built development to much of the ridge; wooded and treed skyline; considerable equestrian pasture; attractive views to north over Borehamwood Plateau; increased impact of horse grazing and golf courses; deterioration of many hedgerows and hedgerow trees; and M1/A41 corridor creates major impact'*.
48. The appeal site exhibits a number of these wider characteristics in terms of running up to the east/west tree-lined ridge, the proximity of well contained built development, horse grazing and the effects of Ash dieback and neglected arboricultural management. Nonetheless, its overall character is largely open countryside with the settlement edge having a limited influence.
49. The parties disagree in their methodologies and inevitably their conclusions on landscape effects. For my part, taking account of the degree of representativeness that the appeal site exhibits, and the scale and nature of the development proposed, there would be a significant adverse effect on the landscape character of the site itself which would not be materially mitigated, even at year 15, by significant additional tree and hedgerow planting.
50. In terms of the Landscape Character Area as a whole, it is to be expected that the effects of the development would be diluted by reference to the wider area. Nonetheless, it is clear that the proposal would rely on terracing to accommodate the sloping nature of the site which, with all other aspects of the development, would result in adverse physical change which would remain evident for the duration of the development.

51. On this basis, taking account of the more marked influence arising from extending the settlement into the countryside, I disagree with the Appellant's conclusion that *'the effect on the landscape character of the wider Landscape Character Area will be minor from year 1 (noting that the site is well-enclosed and already impacted by the settlement edge)'*.
52. Moving on to visual effects, the different methodologies of the expert witnesses result in contrasting professional judgements, generally of *'only half a step'*<sup>12</sup>. The difference is not material for a number of the agreed viewpoints.
53. Looking at those where there is a marked difference, and translating the terminology of effects into judgement based on my own observations, distance and existing dense tree cover in the aspect from the entrance to Woodcock Hill Village Green from Tennison Avenue (Viewpoint 2) would render any effect to be insignificant.
54. From within the village green itself (Viewpoint 4), the proposed development would add depth to the existing settlement edge, albeit views would be filtered by foreground/midground tree cover and contained by the backdrop of dwellings lining Hartfield Avenue. Additional landscaping would offer some amelioration by year 15, and bearing in mind the context of the built-up area around Byron Avenue and Vale Avenue, the overall effect of the proposed development would be on the lower scale identified by the Appellant.
55. Viewpoints 6 and 8 are taken from Barnet Lane, which forms part of the London Loop, to the south of the appeal site. The busy road corridor, with a narrow footway on its northern side, has a marked presence of *'ribbon'* development along part of its southern side. The appeal site and land to the western side of The Farm Gym combine to form an open swathe, but the presence of the settlement edge to the north of the road is apparent. The proposal would reinforce this, but its effect, in context, would not be particularly striking.
56. In terms of viewpoint 7, as a proxy for existing dwellings along the western edge of the site, residents would lose their aspect of open views. The Guidelines for Landscape and Visual Impact Assessment acknowledge that *'residents may be particularly susceptible to changes in their visual amenity .....*<sup>13</sup>. The Council's assessment of effects is more robust, albeit it relates to a limited number of private views rather than the views of the public at large.
57. For viewpoint 9, a vista from a restricted byway accessed from Edgware Lane, looking north, the Appellant's wireframe demonstrates that the proposal would have no perceptible visual effect. Whilst the eventual height of ridgelines related to site levels was questioned, a condition requiring such details to be agreed would be sufficient to safeguard the character of the wider landscape.
58. With reference to the additional viewpoint, viewpoint 10, within the proposed exchange Village Green to the immediate east of the site, the parties are agreed that the effects at years 1 and 15 would be major adverse. Immediacy, the somewhat intermittency of boundary screening and rising land, albeit against the backdrop of existing dwellings, would result in the most adverse effects. However, these would be localised.

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<sup>12</sup> ID16 paragraph 57

<sup>13</sup> Paragraph 6.36



59. In drawing this issue to a conclusion, having walked within the site and around the surrounding area, I consider that the Appellant's position of judging that 'any residual impacts to landscape character and visual amenity will be limited and localised'<sup>14</sup> underplays some of the likely adverse landscape and visual effects.
60. Whilst the Council acknowledges, on its own case, that landscape and visual effects would not represent a standalone reason for refusal, they remain as a material consideration in their own right and with reference to Core Strategy Policy CS12 and Policy SADM11 which broadly require all development proposals to conserve and enhance the natural environment of the Borough.
61. I conclude that moderate harm must be added to the harm to the Green Belt.

**Issue Three:**

**The effect of the proposal on the grassland habitat within the Elstree Tunnel Local Wildlife Site and the appropriateness of the proposed measures to secure Biodiversity Net Gain**

62. The appeal site's north-eastern field includes part of the Elstree Tunnel Grasslands East Local Wildlife Site which was ratified in 1997<sup>15</sup>. It is described at that date as:
- 'Semi-improved neutral grassland supporting a moderate diversity of grasses and herbs. Species recorded on the site include bird's-foot trefoil (*Lotus corniculatus*), meadow buttercup (*Ranunculus acris*), meadow vetchling (*Lathyrus pratensis*), common sorrel (*Rumex acetosa*) and common knapweed (*Centaurea nigra*). The records for small sweet-grass (*Glyceria declinata*), marsh foxtail (*Alopecurus geniculatus*), lady's smock (*Cardamine pratensis*), greater bird's-foot trefoil (*Lotus pedunculatus*), ragged robin (*Lychnis flos-cuculi*) and several rushes (*Juncus* spp.) are indicative of damper ground within the site. Wildlife Site criteria: Grassland indicators'.
63. The Local Wildlife Site has an area of 3.44ha with that element within the appeal site comprising 1.145ha (32.6%). Of that, the development footprint, shown on the Land Use Parameter Plan, would result in the loss of 0.069ha of grassland within the wildlife site boundary; 0.457ha would be occupied by public open space, including the SuDS; and the remainder, 0.619ha, would be a dedicated biodiversity enhancement zone.
64. In view of the dated nature of the original survey, the Appellant undertook a detailed National Vegetation Classification (NVC) survey of the grassland present within the on-site portion of the Local Wildlife Site (August 2022) to understand its botanical value.
65. The dispute between the parties relates to Community 1, comprising approximately 86% of the grassland communities within the on-site portion of the Local Wildlife Site.
66. The Appellant's survey identified that Community 1 supported a grassland indicative of an MG6 sward, of low botanical interest, and subject to grazing and potentially past re-seeding. According to the Appellant, this area of grassland did not appear to meet the description of the Local Wildlife Site grassland for which it is designated.

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<sup>14</sup> ID18 paragraph 42

<sup>15</sup> A small change was made to the boundary in 2018 with the omission of a strip of land based on the presence of a building on aerial imagery, as opposed to an ecological survey.

67. This is disputed by the Council. First, the survey was undertaken at a sub-optimum time of year; second, the field had been cut several weeks prior to the survey; and the application of the Modular Analysis of Vegetation Information System (MAVIS) software showed, with the exception of the permanently wet Community 2, the grassland across the Local Wildlife Site to be substantially consistent despite perceived differences in the abundance of certain species. On this basis, the habitat would still meet the selection criteria.
68. For my part, notwithstanding the drought that occurred in south-east England, photographs taken during the survey do not show the grassland to have dried out.
69. However, I acknowledge that as the field had been cut several weeks before the survey was undertaken, the results could have been distorted by the reemergence and dominance of plant species that are more responsive to cutting.
70. Further, having regard to both the survey data and the application of MAVIS, I consider that it would be somewhat artificial to seek to draw distinctions between habitats within a small sector of the appeal site, where natural boundary features are absent, and where the origins of the community are shared, even where there is variation in species and abundance.
71. Overall, without clear demarcation, this makes it largely irrelevant as to whether or not part of the site continues to meet the selection criteria to merit designation. Nonetheless, it cannot be denied that parts of Community 1 show degradation, although potentially reversible, sustained horse grazing would be likely to intensify diminishing value.
72. The appeal proposal would, by supplanting part of Community 1, as described above, result in the loss of part of the Local Wildlife Site habitat. Any loss is to be taken very seriously.
73. In this regard, different species will often be spatially aggregated, or clumped, which could coincide with an area to be lost; and species abundance may be a factor of site area. However, in this instance, there is nothing to suggest that the loss of part of the Local Wildlife Site would threaten the viability and integrity of that which would remain.
74. Moreover, the remainder of the community could be enhanced, and the higher value communities could be retained, protected by new boundary treatment and managed to enhance their value.
75. Policy SADM10 of the Sites Allocations and Development Management Policies Plan indicates that '*The Council will expect developers to avoid significant harm to sites of importance for ecology, geology and biodiversity by relocating their proposed development (i) on an appropriate alternative site, or (ii) elsewhere within the same site (where the harm would be avoided)*'.
76. The Appellant, on the basis of its assessment of Community 1 being of low value, and with only part of it being directly affected, concluded that significant harm would not arise to the Local Wildlife Site. As such, consideration of relocating the development to an alternative site, or reducing its extent, was not pursued.

77. However, it could be argued that the loss of part of a Local Wildlife Site, albeit relatively small in overall extent and affecting a non-statutory designation, would be significant. In such circumstances, flowing from the first part of Policy SADM10, *'where this cannot be achieved, planning permission will be refused unless: (i) adequate mitigation measures can be employed, which will outweigh the harm caused; or, as a last resort (ii) adequate compensatory measures will be provided and the benefits of the development are clearly shown to outweigh the harm to the natural environment'*.
78. Applying this test, there is no basis to suppose that there is an appropriate alternative site. However, limiting the development, including the provision of the SuDS and the play area, to the northern and southern fields would avoid any harm to the Local Wildlife Site. That is not a route that the Appellant has chosen but, on the balance of the evidence before me, that is not decisive. It is therefore legitimate to reflect on the second limb of Policy SADM10. In any event, the policy has to be read as a whole.
79. I am satisfied that the Appellant's ecology and biodiversity strategy, in its broadest sense, incorporating new species rich grassland, aquatic and wet-land habitat, enhancement of existing hedgerows and new native tree and shrub planting would be capable of providing adequate mitigation.
80. This conclusion is supported by the Biodiversity Metric calculation undertaken for the Local Wildlife Site area only. This shows an increase from 11.45 to 12.11 Habitat Units, resulting in a net gain of 5.77%. In these terms, mitigation would be in excess of the harm. I am also satisfied that the third limb of Policy SADM10 could be met.
81. Further support for the 'hierarchy' of avoid, mitigate and then compensate is provided at paragraph 186 of the Framework as part of the expectation, in paragraph 180, that planning decisions should contribute to and enhance the natural environment by, amongst other things, protecting and enhancing sites of biodiversity value *'..... in a manner commensurate with their statutory status .....*'.
82. Drawing this issue to a close, the Council's planning witness confirmed that, if the Council's ecology evidence was accepted in full, it would not amount to a clear reason for refusal within the meaning of paragraph 11 d) i. of the Framework and footnote 7. Similarly, whilst any finding of harm would have to be weighed in the Green Belt balance, the harm alone would not be determinative.
83. In his proof, the same witness attributed very significant weight to the harm arising to ecology. This was due to the loss of the Local Wildlife Site habitat, conflict with the Biodiversity Gain Hierarchy and lack of certainty regarding the off-site net gain proposed. He also identified conflict with the Development Plan<sup>16</sup>, the Council's Biodiversity Net Gain SPD 2024 and the Framework. I have also had regard to the emerging Regulation 18 Plan, the 'Indicative Developable Area' and the Council's comments in this regard.
84. For my part, in light of my findings above, and the provision to secure biodiversity net gain within the section 106 Agreement, and absent any conflict with the Development Plan (insofar as the respective policies relate to ecology/biodiversity), supplementary guidance and the Framework, I conclude that the loss of part of the Local Wildlife Site should weigh neutral in the overall Green Belt balance.

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<sup>16</sup> Core Strategy Policies SP1 and CS12; and Site Allocations and Development Management Plan Policy SADM10

**Issue Four:**

**The degree and implications of the shortfall in the five-year housing land supply, including consideration of affordable housing and self-build plots**

**(i) The five-year housing land supply**

**a) Introduction**

85. The Statement of Common Ground on Housing Land Supply confirms that the relevant base date is 1 April 2023, and the relevant five-year period is to 31 March 2028. The agreed requirement is 872 dwellings per annum. The primary Statement of Common Ground records the Council's position of a supply of 2.6 years at 1 April 2023 and the Appellant's assessment of 1.05 years. *'Whatever figures are used, it is agreed that the housing land supply shortfall is substantial'*<sup>17</sup>.
86. The figures for each party were the subject of some adjustment and I will base my assessment on the respective positions following the topic specific Round Table Discussion. The Council identifies a supply of 1,859 units, a supply of 2.13 years and a shortfall of 2,503 dwellings. The equivalent figures for the Appellant are 1,043 units, 1.19 years and a shortfall of 3,319 dwellings.
87. The definitive five-year housing land supply position at 1 April 2023 is set out in the Hertsmere Five Year Housing Land Supply Assessment 2022/23<sup>18</sup>.
88. The parties agree that new sites cannot be introduced that were not considered to be deliverable at the base date; but adopt different stances on whether adjustments, for example removing lapsed permissions, amounts to good accounting practice. For my part, subject to being even-handed, there is nothing to preclude reviewing the prospects of those sites previously identified as deliverable, either positive or negative, to provide a snapshot for the purposes of this appeal. I do so below.

**b) Prior notifications under construction**

**Churchill House, Stirling Way**

89. It is not disputed that the prior notification at Churchill House, Stirling Way has lapsed. Although this site will not contribute to the five-year supply, the Council suggests that any loss would be accounted for in the 5% lapse rate allowance for unimplemented permissions. However, whilst the Council has calculated annual aggregated lapse rates in the order of 4.25% and 5.21%, the figures were not before me. In any event, for the purposes of this appeal it would be legitimate to discount the 56 units from the supply.

**c) Planning permissions (not under construction)**

**Instalcom House, Manor Way, Borehamwood, Prestige House, Station Road, Borehamwood and 44 Barnet Road, Potters Bar**

90. These sites are recorded as lapsed. Again, a deduction should be made totalling 44 units.

**Abbey Lodge, 3 Finch Lane Bushey**

91. According to the Appellant's uncontested research, the extant planning permission does not relate to the construction of new dwellings. Accordingly, three units are to be excluded.

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<sup>17</sup> SoCG paragraph 6.6

<sup>18</sup> CD18.7

**d) HELAA sites**

**Hartsbourne Country Club**

92. The planning application submitted in 2020 was the subject of a Committee resolution to approve, subject to the completion of a section 106 Agreement to secure seven affordable housing units off-site at Prestige House. The permission at Prestige House has expired. To my mind, the prospects of the Country Club site has been thrown into considerable doubt and there is no clear relevant information to suggest delivery. The anticipated 25 units are to be deducted.

**Bushey Golf and Country Club**

93. This is a Council owned site on which extensive technical work was undertaken in 2021. The site was re-submitted in the 2022 call for sites. There is no indication of progress since 2021 and some of the earlier technical work, for example the Transport Statement, could be out of date. Although the Council is said to have the drive to develop the site, and further information cannot be disclosed due to commercial sensitivities, evidence to demonstrate firm progress is absent. Without this, 50 units should be omitted.

**Birchville Cottage, Heathbourne Road, Bushey**

94. This is a site with development aspirations expressed in the 2017 call for sites and now the subject of an outline planning application for four dwellings to replace the existing cottage. The Council's anticipation of 15 units is not made out and 12 units are to be removed from the anticipated supply.

**Greenacres, Heathbourne Road, Bushey**

95. A site which was submitted through the call for sites in both 2017 and 2022, with an estimated potential of 35 dwellings, is the subject of a recent application for a C2 facility and 12 extra care units. It is not known whether the proposal is likely to receive favourable consideration, and the Council's witness did not know whether the proposal had followed pre-application discussions. Despite the making of an application, I am not convinced that this alone amounts to clear evidence that housing completions will begin on site within five years. Thirty-five dwellings are to be discounted.

**Lyndhurst Farm, Green Road, Borehamwood**

96. The site came forward in the call for sites in 2017 and 2022 and was a draft allocation in the set aside Local Plan. The site is vacant, and the promoters reaffirmed their interest in 2022 with anticipation of delivery within five years. However, the land is for sale and there is no evidence to support claimed deliverability. Ten units are to be removed.

**The Point**

97. The Point is a Council owned site which was the subject of a draft allocation in the set aside Local Plan for part of a mixed use redevelopment scheme. Despite the recent purchase of a neighbouring frontage as evidence of land assembly, reported continuous discussions, and commercial sensitivities, there is no clear outline of progress or future prospects. Overall, there is an insufficient basis to conclude that this site has a reasonable prospect of deliverability. Fifty units are to be disregarded.

**Aldenham Glebe**

98. The former nursery is located in the Green Belt and was a draft allocation for 30 dwellings in the set aside Local Plan. The Council's anticipation of ten dwellings is based on its assessment of the area covered by nursery buildings. This is disputed by the Appellant, saying that many of the structures were no more than polytunnels and the impression gained that most had '*blended into the landscape*'<sup>19</sup>.
99. The site materialised through the call for sites in 2017 and 2022 with the latest submission being framed as 'policy compliant' which the Council interprets as delivery within five years to the extent that policy would sanction. None of this provides any basis to include the ten dwellings as deliverable.

**Former Sunnybank Glebe**

100. This is a site owned by the County Council. A proposal for the demolition of the school and the erection of 30 dwellings was refused in 2019 and subsequently dismissed on appeal. The Borough Council believes that a smaller part of the site, previously occupied by the pupil referral unit, could accommodate some development. Other than a response to the call for sites, there is nothing of substance to anticipate the delivery of 15 dwellings.

**e) Sites within Elstree Way Corridor Area Action Plan**

**Elstree Way North, Elstree Way South and Civic Car Park**

101. The Council is endeavouring to bring forward sites within the centre of Borehamwood with some flattened schemes already completed. It says that the focus of maximising and prioritising development on brownfield land within a sustainable location has gained added impetus.
102. Despite the dated nature of some of the buildings, the buildings on Elstree Way North remain occupied; the land at Elstree Way South is being advertised for a range of uses, notwithstanding outline permission for 96 residential units; and the redevelopment of the Civic Car Park, to include a new decked facility, has not been endorsed in a meaningful way.
103. In this regard, and with reference to the car park, the Council's Bulletin, dated 13 May 2020, indicates that '*Surveys are being undertaken this week ..... The formal planning application may be submitted in June or July this year but that is dependent on the outcome of the survey work currently being undertaken*'. There is nothing before me to indicate any further progress.
104. Overall, I am not satisfied that there is sufficient indication to demonstrate deliverability and the estimated contribution of 50 units on each of the three sites cannot be endorsed.

**f) Local Plan allocations**

**Former Directors Arms, Ripon Way, Borehamwood**

105. This site is allocated in the Site Allocations and Development Management Policies Plan for 26 dwellings. An application in 2022 for 56 dwellings was withdrawn. There is no suggestion of the likelihood and content of a revised application, despite an indication that the site is subject to a planning performance agreement. Absent evidence to demonstrate deliverability results in the removal of 26 units.

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<sup>19</sup> Framework Glossary 'Previously developed land'



**g) Windfall allowance**

106. The Appellant takes issue with the Council's inclusion of 460 dwellings arising from windfalls and alleges double counting of planning permissions (under and not under construction) and prior approvals to the extent that 330 dwellings should be stripped out.
107. The Council points out that there are 535 units with permission as of April 2023 and anticipates that this figure will be significantly exceeded over the next three years to the tune of 92 windfall units per year on currently unidentified sites of less than ten dwellings.
108. It goes on to say:

*'Over the next three years a significant proportion of sites coming forward for development will be 'new' windfalls, in addition to schemes already consented as of April 2023.*

*Windfall sites of up to nine units are, due to their small size, quite capable of progressing from submission of an application to completion of development within a three year timescale.*

*There is no double counting by including both a relatively modest small sites windfall allowance over the first three years of the five year land supply alongside consented schemes as of April 2023'.*

109. The Council's position is less than clear as it implies that, absent allocations in a Local Plan, *'The Council's fairly conservative windfall approach in only including sites of 1-9 units in the 5 year housing land supply, is itself considered to be an under-estimation of housing supply with a significant proportion of windfall units being delivered on schemes of 10 units or more, which are excluded from windfall capacity'.*
110. Breaking this down, at the beginning of the five-year period there will be a stock of windfall dwellings from existing planning permissions. New windfalls coming forward at year one are unlikely to make a significant contribution to supply in the same year. Similarly, for proposals coming towards the end of the five-year period, completions are likely to form a component of the supply after the end of the current five-year period.
111. In essence, windfalls provide a fluid supply of sites that can be developed within a short space of time. Indeed, the Council appears to recognise the overlap of consented schemes and those coming forward after the base date. The Council's references above, to a three-year period, appear to be the proper basis to assess contribution to the five-year supply resulting in a contribution of 276 units and a loss of 184 units.

**h) Conclusion on five-year housing land supply**

112. The concept of a five-year housing land supply is dynamic. It is not possible in this appeal, as a snapshot in time, to determine a definitive five-year supply. That is set out in the Council's assessment 2022/23<sup>20</sup> as an accountable representation of supply. Nonetheless, having reached a conclusion some months ago as to those sites considered to be deliverable, the exercise before me is to assess whether there are factors which would either support or undermine that judgement.

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<sup>20</sup> CD18.7

113. In this case, as set out above, indication of any progress on the majority of the disputed sites, well into the first year of the five-year period, was woefully deficient in terms of providing the standard of evidence which might be relied on to demonstrate deliverability.
114. Accordingly, I conclude on the material before me, that the Council can demonstrate a supply of 1,189 units and a supply of 1.36 years. This represents a shortfall of 3,173 dwellings. This amplifies the Statement of Common Ground's position that the housing land supply shortfall is substantial. It would not be an exaggeration to say that it is very substantial.

**(ii) Affordable housing**

115. The Appellant's evidence to the Inquiry was unchallenged. The Statement of Common Ground records the principal points of agreement:
- (a) The proposed tenure split will be 70% Social Rent, 25% First Homes and 5% Shared Ownership - this will broadly reflect Policy CS4 of the Core Strategy (2013) as supplemented by the Council's First Homes Advisory Note (2021).
  - (b) Policy CS4 sets an affordable housing target of 1,140 affordable dwellings between 2012 and 2027, equivalent to 76 affordable dwellings per annum.
  - (c) The 2016 SHMA<sup>21</sup> identifies a need for 434 affordable dwellings per annum between 2013 and 2036; from the beginning of this period, net affordable housing completions have averaged 51 units per annum; resulting in a cumulative shortfall of 3,833 affordable homes.
  - (d) The 2020 LHNA<sup>22</sup> identifies a need for 356 affordable/social rented dwellings and 147 affordable homeownership dwellings per annum - a total need for 503 affordable dwellings per annum between 2020 and 2036. Completions have averaged 50 units per annum (net of Right to Buy) resulting in a cumulative shortfall of 1,358 affordable homes.
  - (e) The Standard Method calculation of Local Housing Need does neither provide an annual need figure for affordable housing in line with the Planning Practice Guidance nor does it monitor affordable housing supply.
  - (f) Since the start of the Core Strategy period, there has been a total of 4,315 net overall housing completions and 644 gross affordable housing completions, equivalent to an average of 59 gross affordable dwellings per annum across the Borough.
  - (g) Since the start of the Core Strategy period, the Council has added 55 affordable dwellings per annum (net of Right to Buy), equivalent to 14% of the net overall housing completions, against a target of 76 net affordable dwellings per annum resulting in a cumulative shortfall of 230 affordable homes.

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<sup>21</sup> South West Hertfordshire Strategic Housing Market Assessment 2016 ("2016 SHMA") – CD18.2

<sup>22</sup> South West Hertfordshire Local Housing Need Assessment 2020 ("2020 LHNA") – CD18.3

- (h) On 31 March 2023 there were 634 households on the Housing Register; the average wait to be housed in an affordable home within the Borough was 6.5 months for a one-bedroom affordable home; 12 months for a two-bedroom affordable home; 18 months for a three-bedroom affordable home; and 36 months for a four plus bedroom affordable home.
  - (i) Affordability indicators show that housing is becoming less affordable in the Borough by reference to households housed in temporary accommodation; increases in median private rents and average lower quartile monthly rents; ratio of median house prices to median incomes in the Borough and above the East of England comparators and national figures.
  - (j) Overall, there is an acute national housing crisis; there is an acute need for affordable housing across Hertsmere; and annual needs are far greater than what has been provided to date.
116. Despite the extent of agreement, the parties disagree on the weight to be attributed to the delivery of up to 33 affordable dwellings. I return to this below.

**(iii) Self-build and Custom housebuilding**

117. The Council did not offer any evidence, or effectively challenge the Appellant's case, on self-build and custom housebuilding. The Statement of Common Ground records the principal points of agreement:
- (a) The appeal scheme proposes four plots for self-build and custom housebuilding; the Framework (2012) identified a need to plan for this sector; and the current Framework, reflecting the Housing White Paper, identifies that such provision has an important role in meeting the needs of different groups as part of the overall objective to significantly boost the supply of homes.
  - (b) The Council does not have any adopted policies to secure self-build and custom housebuilding; the Council has a statutory duty to meet demand arising from its Self-Build Register.
  - (c) The Local Housing Needs Assessment (2020) does not provide any estimation of likely future demand; the Council has not undertaken a robust assessment of demand; and the Council has not met its statutory duty as CIL self-build exemptions are not a sufficiently robust method of recording permissions to meet register demand.
  - (d) There are at least 76 individuals and at least four associations of individuals on the Self-Build Register in the period 1 April 2016 to 30 October 2023; Self-Build Registers are likely to significantly under-represent latent demand; secondary data sources suggest far greater interest.
  - (e) There is a cumulative unmet need for at least 16 serviced plots for the period 31 October 2017 to 30 October 2020; and there is an unmet need for a further 18 plots from 31 October 2020 which must be met by 30 October 2024.

- (f) Appeal decisions have found the Council's approach to be insufficiently robust<sup>23</sup>; and the appeal proposal would address 25% of the current shortfall.

118. The matter in dispute is one of weight to be applied in the planning balance which I discuss below.

**Issue Five:**

**Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal**

119. In this section, I attribute weight on the scale common to the parties, set out in ascending order: no weight/neutral; very limited; limited; moderate; significant; very significant; substantial; and very substantial.

**(i) The benefits of the appeal proposal**

**Housing Supply**

120. The contribution of up to 74 new homes to the Council's housing land supply is an agreed benefit. The Council accepts that the shortfall is substantial, and the need for new houses '*severe and acute*'. The Council attributes significant weight to the component of up to 41 market dwellings, proportionate to the number of dwellings proposed. The Appellant considers that very substantial weight should be afforded, based on its assessment of the five-year supply, reducing to substantial weight on the Council's case.
121. For my part, the starting point is my earlier conclusion that the Council, for the purposes of this appeal, can realistically only demonstrate a deliverable housing land supply of 1.36 years, representing a shortfall of 3,173 dwellings. The shortfall is very substantial.
122. Looking beyond the headlines, the existing Core Strategy was founded on the '*partial step*' housing numbers of the former East of England Plan. In addition, it was adopted on the basis that the Council would, on the Inspector's pragmatic recommendation, undertake a partial review of the Plan within three years in order to meet objectively assessed needs for housing. The review did not occur and the housing numbers in the Core Strategy are grossly outdated.
123. The Council's endeavours to update the Core Strategy began in 2016. This led to the publication of a draft plan in September 2021 and the inclusion of the appeal site for housing development. However, the Council decided to set aside the draft plan in April 2022.
124. As indicated earlier, a revised Regulation Draft Local Plan is to be published for consultation, beginning on 3 April 2024. The Local Development Scheme anticipates adoption in mid-2026. However, the Council accepts a range of serious risks on the route to targeted adoption. It also acknowledges that meeting future housing needs will be dependent on developing some sites that are currently in the Green Belt.
125. Calibration of the weight to be attached to the benefit is not an exact science and there is no prescribed methodology. Inspectors' decisions may be informative, but each case, even in the same Borough, is likely to be fact specific.

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<sup>23</sup> CD16.4, CD16.6, CD16.7, CD16.8, CD16.10 and CD16.24

126. The Council's attribution of weight, based on the factors above, also included consideration of the scale of the development. Numerically, the proposal would deliver materially less dwellings than either the Shenley Road or the Little Bushey Lane projects.
127. At Shenley Road, the Inspector gave substantial weight to 195 new homes, based on 2.25 years supply, acknowledging that the Harris Road Inspector attributed significant weight to the provision of 37 dwellings there; and at Little Bushey Lane the Inspector gave very substantial weight to up to 310 residential units if the then Appellant's worst-case scenario of 1.23 years were to be endorsed.
128. For my part, I support the Council's acknowledgement that the proposed homes are likely to be deliverable within the five-year period. Deliverability, and the contribution to the five-year supply, is a further factor to be considered in assessing the degree of weight as larger schemes are unlikely to render their entire quantum within the same time-period. Ultimately, a number of elements feed into the planning judgement.
129. Having considered all of these, I ascribe very substantial weight to the delivery of market housing based on the specific circumstances before me.

**Affordable housing**

130. The proposal would deliver 45% affordable housing, compared to the policy requirement of at least 35%, amounting to up to 33 dwellings. The difference between the parties is again one of weight, with the Council favouring substantial weight and the Appellant claiming very substantial weight.
131. The Council suggests that the weight increases with the number provided and not the overall percentage. However, the two are inextricably linked as a greater percentage inevitably increases the actual quantum. Again, comparison is made with Little Bushey Lane, where up to 124 affordable homes (40%) were given very substantial weight, and it is said it would be rational to acknowledge the difference in scale by apportioning lesser weight.
132. However, since that date, net delivery has decreased, and the shortfall has increased. It is telling that as little as 14% of total housing completions have been affordable and future prospects offer no solace to a mounting problem.
133. On this basis, and taking account of the totality of Appellant's undisputed evidence, the anticipation of up to 33 affordable units being delivered within the five-year period also merits very substantial weight.

**Self-build and custom housebuilding**

134. It is agreed that the benefit is less important than the market and affordable housing with the Council regarding moderate weight as proportionate to other appeal decisions. In this regard, three plots at Harris Lane were given limited weight and ten plots at Little Bushey Lane rose to substantial weight. The Appellant identifies substantial weight on the basis of its unchallenged evidence.
135. The number of plots, up to four, is numerically small. However, the Council has made no provision to meet the needs of self-builders; its estimation of demand, based on its Register, is likely to be incomplete; and consideration of the extent to which demand was being met was lacking.

136. On the balance of the evidence, and having regard to paragraph 63 of the Framework, I consider that the benefit derived merits significant weight.

**Biodiversity Net Gain**

137. The Council accepts that once the correct baseline figure for the appeal site is agreed, it would be possible for the Appellant to achieve 20% biodiversity net gain through off-site measures. The section 106 Agreement would secure this. Again, the disagreement goes to the weight of the benefit. The Council's assessment of limited weight relies heavily on its case of adverse effects on the Elstree Tunnel Local Wildlife Site which I have not endorsed in full. The Appellant's position is one of significant weight.

138. Assessment must be site and fact specific. I have noted the views of the Inspector in the Shenley Road case and the task before him based on a number of other appeal decisions. His conclusion was that *'..... the mere doubling of the BNG percentage ..... above what will very soon be the legal requirement, is a fairly modest BNG. Consequently, I afford it only limited weight'*<sup>24</sup>.

139. The application leading to this appeal was submitted at a time when the only requirement for biodiversity net gain was expressed in the Framework<sup>25</sup> in non-specific terms, for example *'[180 d)] minimising impacts on and providing net gains for biodiversity .....'* and *'[186 d)] ..... while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity'*. The development plan was silent.

140. In January 2024, the Council adopted a Biodiversity Net Gain Supplementary Planning Document which expects<sup>26</sup> all applications to achieve at least 10% biodiversity net gain. This pre-dated the coming into force of the statutory framework and government guidance on biodiversity net gain which became mandatory for certain categories of development on 12 February 2024. The requirement does not apply to the appeal proposal as the legislation relates only to applications made after the due date.

141. The Planning Practice Guidance<sup>27</sup>, confirms that *'The statutory framework represents the appropriate national approach towards, and benchmark for, biodiversity gains in planning'*.

142. The Council, in its closings<sup>28</sup>, refers to the Saredon Aggregates judgement<sup>29</sup> as follows: *'The judgment does not provide that the principle of the imminent application of the 10% minimum to all planning applications cannot be a material consideration in relation to a proposal to which it does not apply. It is obviously 'material' to note when calibrating the relative importance of a measure of net gain that, as of now, new applications will be subject to a national minimum requirement of 10% BNG. It provides, if nothing else, a benchmark'*.

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<sup>24</sup> CD16.35 paragraphs 87 - 91

<sup>25</sup> Reference paragraphs relate to the Framework December 2023

<sup>26</sup> Confirmed by the Council's witness to be an aspiration and not a policy requirement

<sup>27</sup> Planning Practice Guidance Biodiversity net gain - paragraph 020 Reference ID:74-020-20240214

<sup>28</sup> ID16 paragraph 106

<sup>29</sup> CD15.7 [2023] EWHC 2795



143. Paragraph 43 of the judgement states:

*'..... If the Inspector's assessment of the weight to be given to the biodiversity net gain was based on an incorrect view of the law or involved taking account of a matter which was not properly a material consideration that would have been an error of law causing him to exercise his planning judgement on an incorrect basis'.*

144. I see some tension in the Council's submission in light of the submission for the Appellant on its interpretation of Saredon, notably:

*'The effect of that interpretation is that when assessing the weight to be attributed to the biodiversity net gain for the purposes of assessing whether there were very special circumstances outweighing the harm to the openness of the Green Belt the Inspector reduced that weight on the basis of a mistaken view as to the law. He did so believing incorrectly that some of the net gain would be required in any event by reason of the forthcoming legislation. That was an error of law and meant that the Inspector exercised his planning judgement as to the weight to be given to that material consideration (namely the net gain) on a basis which was wrong in law'.*

145. Returning to that which precedes the respective submissions, I am of the view that the relevant 'benchmark' is that of the Framework. Even though the Appellant was candid in admitting that the motive of achieving at least 20% biodiversity net gain was to boost the benefit to counterbalance the acknowledged harm to the Green Belt, I consider that the weight to be attached to this level of biodiversity enhancement is moderate<sup>30</sup>.

#### **Economic Benefits**

146. The Statement of Common Ground, by reference to paragraph 85 of the Framework, confirms that the proposal would deliver a number of economic benefits including: the direct creation of construction jobs; the creation of other jobs in construction related activities; and additional household expenditure in the local area. The claimed weights to the economic benefits are pitched at significant by the Appellant and limited by the Council.

147. Such benefits would, in general terms, be attributable to any correspondingly similar scheme. Whilst the proposal falls outside the plan-led system of directing development to preferred locations, which will be addressed by the emerging Local Plan, the inescapable fact is that new housebuilding in the Borough, and the contribution of this sector to the local economy, is currently constrained by the glaring shortfall in the five-year housing land supply.

148. It appears inevitable that some sites that are currently in the Green Belt will have to be developed for housing to meet Hertsmere's needs. Again, acknowledging that it would be preferable for this to be plan-led, I am not convinced, in the circumstances of this case, that the economic benefits of the proposal should be downplayed, to the level suggested by the Council, on the basis of the appeal site being located in the Green Belt. In my opinion, a more balanced assessment would be moderate weight to the combined economic benefits.

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<sup>30</sup> Based on my overall calibration scale set out earlier

**(ii) Other Considerations**

**Introduction**

149. The overwhelming majority of the written representations from local residents and other interested parties raised objections to the proposed development. A number of local people also spoke at the Inquiry against the proposal. Some of the matters raised have been embodied within my consideration of the main issues.

**Highways and Transport**

150. A range of points relate to highway matters and the impacts of additional traffic. These are summarised in the Officer Report. The criticism about the timing of the Transport Assessment was recorded with reference to subsequent up-date surveys. The Highway Authority has maintained its position of endorsing the acceptability of the proposed development.
151. I am aware of the congestion that occurs at some local junctions, and that vehicles generated by the proposed development would add further burden. However, Development Plan policies and the Framework indicate that development should only be refused on highway grounds where there would be severe residual cumulative impacts on the operation or safety of the highway network.
152. The Statement of Common Ground indicates that the Council and the Appellant agree that the appeal scheme would be acceptable in highway safety and impact on the highway network, subject to conditions and obligations to be secured through the section 106 Agreement. Without compelling contrary evidence to undermine this position, I conclude that there is insufficient justification to counter the technical evidence and due consideration by the competent authorities.
153. As to locational sustainability, it is evident that there are no public transport linkages, shops or other facilities within the immediate vicinity of the site. Nonetheless, bus services, railway station, shops and a number of amenities are recognised to be within walking distance. There would also be opportunities to promote sustainable transport modes through the section 106 Agreement. As such, the proposal would accord with Core Strategy Policy CS26 and the aims of the Framework.

**Flood Risk and Drainage**

154. A number of representations relate to the aggravation of existing drainage and flooding issues. The Addendum Flood Risk Assessment and Surface Water Drainage Strategy adequately demonstrate that the proposal would not add to any pre-existing conditions. There is no other technical evidence to undermine the conclusions of the Lead Local Flood Authority.

**Impact on existing infrastructure**

155. The numerous concerns about school places, health services and the like can be offset either by Community Infrastructure Levy contributions (for example education) or secured through the section 106 Agreement which has specific provision for either the Theobald Medical Centre or Schopwick Surgery. There is no suggestion from the relevant authorities to show the inability to accommodate the proposed development.

### **Other matters**

156. From my consideration of all of the matters raised, there is nothing else which would either go to the main issues before me or feed into the overall planning balance.

### **The Planning Balance**

157. As Counsel for the Council puts it '*..... this appeal is really about reconciling two competing priorities. The first of the two involves addressing the country's chronic housing shortfall ..... The second priority is preserving the openness of the Green Belt ..... This proposal would further one national priority and directly undermine another*<sup>31</sup>.
158. The Framework makes plain that '*The Government attaches great importance to Green Belts ..... Inappropriate development ..... should not be approved except in very special circumstances ..... authorities should ensure that substantial weight is given to any harm to the Green Belt*'.
159. The Framework stipulates weight in a number of circumstances. Paragraph 124 c) is the only other instance where substantial weight is to be given, notably in respect of using suitable brownfield land within settlements. Elsewhere there are expressions of significant weight and great weight.
160. Further, paragraph 11 d) i of the Framework disapplies the presumption in favour of sustainable development to certain categories of sites including Green Belts.
161. The Statement of the Secretary of State for Levelling Up, Housing and Communities, *The Next Stage in Our Long Term Plan for Housing Update*<sup>32</sup> reaffirms that '*This Government is committed to protecting the Green Belt ..... The Green Belt is vital for preventing urban sprawl and encroachment on valued countryside .....*'.
162. The Statement also refers to five-year housing land supply in the following terms: '*Up-to-date local plans ensure local communities are in control of where and what development happens in their area. They are key to getting more homes built in the right places. Where such plans are in place, the Government is committed to protecting local authorities from unwarranted speculative development*'.
163. It continues: '*Local authorities will have a clearer than ever incentive to get plans in place. Without them, authorities will not be able to control development as their community might wish. There are clear consequences to failing to get a plan in place which delivers a pipeline of new housing*'.
164. In the case before me, the Development Plan was recognised to be lacking in its provision of housing on adoption in 2013. The commitment to review within a period of three years did not happen. The process of preparing a new Local Plan that commenced in 2016 finally faltered and was set aside in 2022. Even though a Regulation 18 Draft Local Plan is to be published shortly for consultation, adoption is likely to be at least two years away. In the meantime, the Council faces an ongoing severe shortage of identified land for housing.

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<sup>31</sup> ID16 paragraphs 1 - 8

<sup>32</sup> 19 December 2023

165. Although the Appellant was critical of the lack of any review, or material amendments, to the Green Belt boundaries since they were established in the 1950s, the essential characteristics of Green Belts are their openness and permanence. The December 2023 version of the Framework now indicates that *'there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated'*.
166. Reverting to the earlier text: *'Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development'*.
167. Some 80% of Hertsmere is Green Belt and the Council accepts that the release of some Green Belt land to meet housing needs is inevitable. Whilst not of any real weight, it is notable that after a comprehensive assessment of the Green Belt, the appeal site was identified for housing development in the now set aside Local Plan and it continues to be so in the emerging Local Plan.
168. Although the Council claims that it has been a political choice by the Government to put Green Belt at the top of the tree of priorities, even above the need for more housing, and a choice for which it shows no wavering, it has to be said that local authorities have a responsibility if that choice is to be fulfilled. The Government's December 2023 statement makes that plain.
169. Against this background, I turn to the balance before me. The starting point, as previously expressed, is to attribute substantial harm to the Green Belt and its purposes. To that must be added the harm to landscape and visual amenity to which I attach moderate weight.
170. The impacts on the Local Wildlife Site are neutral in the equation.
171. Set against this is the very substantial weight which I have ascribed to market housing and very substantial weight to affordable housing. Self-build and custom housebuilding deserve significant weight. Further advantage accrues from the moderate weight I attach to Biodiversity Net Gain<sup>33</sup>. The economic benefits in the circumstances of this case justify moderate weight.
172. To my mind, the combination of the housing benefits, set against the failure of the development plan and the plan-making process, in their widest sense, and the overwhelming deficiency in the five-year housing land supply, and the other benefits described, clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal. Overall, I consider that very special circumstances exist which justify the development.
173. It follows for the purposes of paragraph 11 d) i. of the Framework, that the Green Belt does not provide a clear reason for refusing the development proposed. In light of my conclusion above, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

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<sup>33</sup> Even if the benchmark should be measured against the expectation of a 10% net gain, the benefit would be of limited weight and this would not change my overall conclusion

174. Therefore the presumption in favour of sustainable development applies. On this basis, the proposal would accord with Core Strategy Policy SP2 (Presumption in Favour of Sustainable Development) and Policy CS13 (The Green Belt) and the development plan as a whole.

175. I therefore conclude that the appeal should be allowed.

**Planning Conditions**

176. Conditions will be required to secure reserved details of the proposed development within two years from the date of this decision to facilitate early delivery of the scheme; and commencement of development no later than two years following approval of the last of the reserved matters. Notwithstanding the views of the parties at the Inquiry, I consider it necessary to define the permission by specifying the maximum number of dwellings to be permitted for certainty. [Conditions 1 and 2]

177. A Community Infrastructure Levy Phasing Plan is to be submitted concurrent with the first submission of reserved matters which is a recognised means of securing payments as the development progresses. [Condition3]

178. Further details of the approved access location are required to ensure appropriate design and specification; the approved plans are identified to define the permission; and elements of the internal highway details are to be agreed for highway safety and function. [Conditions 4, 5 and 6]

179. The mix of type, size and tenure of market and affordable housing, including accessible and adaptable housing, is to be approved to ensure a satisfactory mix to meet identified housing needs. [Conditions 7 and 9]

180. Landscaping provision, management and maintenance will be an integral part of securing an attractive form of development. A detailed drainage strategy, following the principles of the Flood Risk Assessment and Drainage Strategy and Addendum, submitted as part of the application, needs to be approved and implemented to ensure that existing local flooding is not exacerbated. A surface water management plan for the construction phase is a related prerequisite. [Conditions 8, 10 and 11]

181. Conditions to secure appropriate working and management arrangements, including a strategy for site waste, represent essential good practice for sustainability, safety and general amenity. The trees and hedges on the site that are to be retained are to be protected in accordance with a method statement to ensure longevity. Development is to be restricted until an assessment of potential land contamination has been undertaken and any necessary remediation will be required for health and safety reasons. Site investigation and a programme of archaeological works will ensure that any heritage assets of archaeological significance within the site are recorded. [Conditions 12, 13, 14, 16 and 17]

182. It is important that the proposed development is designed to minimise carbon dioxide emissions and enhance its sustainability credentials. A scheme of noise protection for the new dwellings will need to be devised to ensure appropriate living conditions in relation to traffic noise on Barnet Lane. [Conditions 15 and 18]

183. Detailed measures for biodiversity enhancement are necessary to comply with relevant legislation and Development Plan policies. Precise details of the intended SuDS, including its maintenance and management, is intended to secure a high standard of sustainability and to address surface water drainage without risk to nearby dwellings. Similarly, verification of drainage works, as they progress, are to be provided. [Conditions 19, 20 and 21]
184. Agreement is required on the provision of fire hydrants for public safety; any imported soil is to be verified as free from contamination; and a lighting strategy, designed for biodiversity, is justified to protect habitats. Additional mitigation measures to safeguard protected species during construction are also important. [Conditions 22, 23, 24 and 26]
185. Finally, a scheme for the parking and storage of bicycles will contribute to sustainable transport measures. Site levels are also to be established to provide a fixed datum to which slab and ridge heights are to be agreed in order to protect the wider landscape<sup>34</sup>. [Conditions 25 and 27]
186. I have made some minor amendments to the agreed draft conditions for clarity, consistency and precision.

**Conclusion**

187. For the reasons given above the appeal is allowed subject to the conditions in the Schedule which follows.

*David MH Rose*

Inspector

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<sup>34</sup> As described in paragraph 57 above



## **Schedule of Planning Conditions (1 – 27)**

### **1) Reserved Matters**

Details of the appearance, landscaping, layout and scale, (hereinafter called, the market and affordable reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any market and affordable development begins and the development shall thereafter be carried out as approved.

Details of the appearance, landscaping, layout and scale reserved matters of any self-build or custom housebuilding plot (hereafter called the SBCH reserved matters), shall be submitted to and approved in writing by the Local Planning Authority before any development relating directly to that self-build and custom housebuilding plot begins and the self-build and custom housebuilding development shall be carried out as approved.

Reserved matters details shall comprise no more than a total of 74 dwellings.

### **2) Timescales**

Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission. The development hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.

### **3) Community Infrastructure Levy Phasing Plan**

Concurrent with the submission of the first reserved matters a Community Infrastructure Levy Phasing Plan shall be submitted to and approved in writing by the Local Planning Authority and the Phasing Plan shall be implemented as approved.

### **4) Access Plans**

Prior to the first occupation of the development hereby permitted access to the site shall be completed and thereafter retained as shown on drawing number (173629/A/06) in accordance with details/specifications to be submitted to and approved in writing by the Local Planning Authority.

### **5) Approved Plans**

The development hereby permitted shall be carried out in accordance with the details described on the following plans:

- SLP 01 Rev A – Location Plan
- LUPP-01 Rev D – Parameter Plan

### **6) Highway details**

Details submitted with the layout reserved matters, as required by condition 1, shall include (in the form of scaled plans and / or written specifications) details of:

- i) roads and footways;
- ii) cycleways;

- iii) foul and surface water drainage;
- iv) visibility splays;
- v) access arrangements;
- vi) parking provision;
- vii) loading areas; and
- viii) turning areas.

The approved development shall be carried out in accordance with the approved details and retained in perpetuity.

#### **7) Housing Mix**

Details submitted with the layout reserved matters, as required by condition 1, shall include details of the mix of type, size and tenure of market and affordable dwellings to be provided in that phase, for approval in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

#### **8) Landscape Reserved Matters**

Details submitted with the landscape reserved matters, as required by condition 1, shall include the following:

- i) A scheme of soft landscaping for the site drawn to a scale of not less than 1:200;
- ii) Planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/ densities;
- iii) A statement explaining how the species and provenance of the proposed tree and hedgerow planting has been selected to be resilient to climate change and biosecurity;
- iv) Existing and proposed finished levels and contours showing earthworks and mounding (where appropriate); surfacing materials; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulations areas; hard surfacing materials; minor artefacts and structures (for example refuse and/or other storage units, lighting and similar features); proposed and existing functional services above and below ground (for example drainage, power, communications cables and pipelines, indicating lines, inspection chambers, supports and other technical features); details of play area, including play equipment; retained historic landscape features and proposals for restoration where relevant;
- v) A Landscape Management Plan including the long-term design objectives, management responsibilities and details of arrangements for implementation, specifications, maintenance schedules and periods for all hard and soft landscape areas, (other than privately owned plots) together with a timetable for the implementation of the Landscape Management Plan.

The hard landscaping scheme shall be implemented and retained thereafter prior to the occupation of any relevant part of the development.

The approved scheme of soft landscaping works shall be implemented and retained thereafter in accordance with BS 8545:2014 'Trees: from nursery to independence in the landscape' and not later than the first planting season following commencement of the development (or within such extended period as may first be agreed in writing with the Local Planning Authority). New planting shall comply with the requirements specified in BS 3936-1:1992 'Specification of Nursery Stock Part 1 Trees and Shrubs', and in BS 4428: 1989 'Recommendations for General Landscape Operations'. Any planting removed, dying, or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species.

The Landscape Management Plan shall be carried out in accordance with the approved details and retained thereafter.

#### **9) Accessible and Adaptable Housing**

Details submitted with the layout reserved matters, as required by condition 1, shall include a scheme setting out the arrangements for the delivery of accessible housing in accordance with the following requirements:

- a) A schedule of units, together with appropriate plans and drawings, setting out details of the number, layout and location of all units that will comply with Part M, M4 (2) (Accessible and Adaptable Dwellings) and Part M4(3) (Wheelchair Accessible Dwellings) of the Building Regulations 2010 (as amended).
  - i. All new dwellings shall meet Building Regulations Part M4(2) standards as a minimum.
  - ii. A minimum of 7.5% of affordable homes and 2.5% of market homes shall be designed to meet Building Regulations Part M4(3) (2) (a) (wheelchair accessible dwelling) standards.
  - iii. A minimum of 1 social rented dwelling (forming part of the 7.5% requirement for affordable homes) to achieve Building Regulations Part M4(3) (2) (b) (wheelchair accessible dwelling) standards.
- b) All units specified as M4(2) and M4(3) in the agreed schedule and plans shall be implemented in accordance with that approval and in compliance with the corresponding part of the Building Regulations in that regard;
- c) Written verification of the completion of all dwellings in accord with part (a) above shall be supplied to the Local Planning Authority within 30 days of the practical completion [or the block it forms part of].

#### **10) Detailed Drainage Strategy**

Prior to or in conjunction with the submission of each reserved matters application, in accordance with the submitted FRA and Drainage Strategy (Barnet Lane West, Hertsmere reference: TT/VL/P22-2718/02 revision C dated 23 December 2022 by Create Consulting) and the FRA and Drainage Strategy Addendum (Barnet Lane West reference: JE/CC/P22-2718/05 Revision B dated 15 November 2023 by Create Consulting), detailed designs of a surface water drainage scheme incorporating the following measures shall be submitted to and agreed with the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development. The scheme shall address the following matters:

- i) Surface water runoff rates to be attenuated to 8.5 l/s based on the area draining to the proposed attenuation basin.
- ii) Provision of surface water attenuation storage, sized and designed to accommodate the volume of water generated in all rainfall events up to and including the critical storm duration for the 3.33% AEP (1 in 30 year) rainfall event plus 35% climate change and 1% AEP (1 in 100) rainfall event plus 40% climate change. An allowance of 10% urban creep shall be added.
- iii) Source control measures shall be implemented as indicated as suitable in the FRA Addendum Section 4.21 and Table 4.5.
- iv) Detailed designs, modelling calculations and plans of the drainage conveyance network in the:
  - a. 3.33% AEP (1 in 30 year) critical rainfall event plus 35% climate change to show no flooding outside the drainage features on any part of the site.
  - b. 1% AEP (1 in 100 year) critical rainfall plus 40% climate change event to show, if any, the depth, volume and storage location of any flooding outside the drainage features, ensuring that flooding does not occur in any part of a building or any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development. It will also show that no runoff during this event will leave the site uncontrolled.
- v) The design of the attenuation basin, if constructed above surrounding ground levels, shall incorporate an emergency spillway and any drainage structures include appropriate freeboard allowances. Drawings shall be submitted showing the routes for the management of exceedance surface water flow routes that minimise the risk to people and property during rainfall events in excess of 1% AEP (1 in 100) rainfall event plus climate change allowance.
- vi) Finished ground floor levels of properties shall be a minimum of 300mm above expected flood levels of all sources of flooding (including the ordinary watercourses, SuDS features and within any proposed drainage scheme) or 150mm above ground level, whichever is the more precautionary.
- vii) Details of how all surface water management features to be designed in accordance with The SuDS Manual (CIRIA C753, 2015), including appropriate treatment stages for water quality prior to discharge.
- viii) Details of appropriate arrangements to be made for surface water to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

#### **11) Construction Phase Surface Water Management Plan**

No construction works (including any groundworks and site clearance) shall take place until a detailed construction phase surface water management plan for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be carried out in accordance with the approved details.

**12) Site Waste Management Plan**

No development shall take place until a Site Waste Management Plan (SWMP) for the site has been submitted to the Local Planning Authority and approved. The SWMP shall aim to reduce the amount of waste being produced on site and should contain information including estimated and actual types and amounts of waste removed from the site and where that waste is being taken to. The development shall be carried out in accordance with the approved SWMP.

**13) Construction Environmental Management Plan**

No development shall take place until a Construction Environmental Management Plan (in accordance with the best practice guidelines as described in the Construction Logistics and Community Safety (CLOCS) Standard), has been submitted to and approved in writing by the Local Planning Authority.

Thereafter the construction of the development shall only be carried out in accordance with the approved Construction Environmental Management Plan. The Construction Environmental Management Plan shall include details of:

- i) The construction programme and phasing;
- ii) Hours of operation;
- iii) Details of any highway works necessary to enable construction to take place;
- iv) Details of routing of construction traffic and associated waymarking;
- v) Details of servicing and delivery, including details of site access, compound, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- vi) Where works cannot be wholly contained within the site, a plan shall be submitted showing the site layout on the highway, including extent of hoarding, pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- vii) Management of construction traffic and deliveries to reduce congestion and avoid school pick up/drop off times, including numbers, type and routing;
- viii) Control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;
- ix) Details of public contact arrangements and complaint management;
- x) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
- xi) Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
- xii) Measures to be implemented to ensure wayfinding for both occupiers of the site and for those travelling through it during construction; and

xiii) Measures to protect biodiversity, including

- Pre-commencement checks for protected and notable species, with subsequent mitigation as deemed appropriate;
- Risk assessment of potentially damaging construction activities;
- Identification of “biodiversity protection zones”;
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- Use of protective fences, exclusion barriers and warning signs.

**14) Tree Protection**

No development (including any demolition, groundworks and site clearance) shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall include details of the following:

- a. Measures for the protection of those trees and hedges on the application site that are to be retained;
- b. Details of all construction measures within the 'Root Protection Area' (defined by a radius of  $dbh \times 12$  where  $dbh$  is the diameter of the trunk measured at a height of 1.5m above ground level) of those trees on the application site which are to be retained specifying the position, depth, and method of construction/installation/excavation of service trenches, building foundations, hardstandings, roads and footpaths; and
- c. A schedule of proposed surgery works to be undertaken to those trees and hedges on the application site which are to be retained.

The development shall be carried out in accordance with the approved Method Statement.

**15) Climate Change and Energy Statement**

No development shall commence until a Climate Change and Energy Statement (to include a Whole Life Carbon Assessment) has been submitted to and approved in writing by the Local Planning Authority.

The statement shall demonstrate how the development will make the fullest contribution to minimising carbon dioxide emissions and enhancing the sustainability credentials of the development, through a range of design, technological, landscape and ecological measures, in accordance with the following energy hierarchy:



- i) Be lean: use less existing energy;
- ii) Be clean: supply and use energy efficiently; and
- iii) Be green: use renewable energy;

The statement shall also demonstrate how efficiency measures will enable a maximum potable water usage of 110 litres per person per day to be achieved.

The measures set out within the statement shall thereafter be implemented in full prior to the first occupation of the associated phase of the development.

#### **16) Contamination**

- A) With the exception of demolition, no development shall commence until a contaminated land desk-top study and site reconnaissance exercise (Phase 1) has been submitted to, and approved by, the Local Planning Authority. The desk top study and site reconnaissance exercise (Phase 1) shall establish whether the site is potentially contaminated and to produce a conceptual model of the site indicating sources of potential contamination and possible pathways to receptors of concern.
- B) If the contaminated land desk top study and site reconnaissance exercise (Phase 1) demonstrate that a site investigation is required then with the exception of demolition, no development shall commence until a Site Investigation (Phase 2) has been submitted to, and approved by, the Local Planning Authority. The site investigation shall consider relevant soil, soil gas (including an assessment of the risk posed to future site users), surface and groundwater sampling, in accordance with the quality assured sampling and analysis methodology of the Contaminated Land Reports as well as other appropriate guidance where necessary. This shall include risk assessment based on the Contaminated Land Exposure Assessment Model or where appropriate other guidance providing adequate justification can be provided for such use. The site investigation report shall detail all investigative works and sampling on site, together with the results of analysis and risk assessment to any receptors.
- C) If the contaminated land site investigation (Phase 2) demonstrates that remediation is required then with the exception of demolition, no development shall commence (which shall include remedial actions) until a remediation strategy has been submitted to, and approved by, the Local Planning Authority. The proposed remediation shall be of such a nature so as to render harmless the identified contamination in the site investigation (Phase 2) given the proposed end use of the site and surrounding environment, including any controlled waters. The remediation work as outlined in the approved remediation strategy shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. Any laboratories used for sampling shall be compliant with UKAS/MCERT or an equivalent approved accredited quality control system as appropriate.

- D) The contaminated land remedial actions as approved within the remediation strategy shall be implemented and prior to the occupation of any building a validation report shall be submitted to and agreed in writing with the Local Planning Authority to demonstrate compliance with the approved remediation strategy.
- E) If during any works onsite, contamination is encountered which has not previously been identified, including new hotspots uncovered by demolition, then the additional contamination shall be fully assessed and the remediation strategy amended. The amended remediation strategy shall be submitted to and agreed in writing with the Local Planning Authority. As required, all works on site shall be made available to a designated Council Officer.

**17) Archaeology**

- A) No demolition/development shall take place/commence until an Archaeological Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing and in accordance with the programme of work as set out in the Archaeological Brief (P10/23/0937-1). The scheme shall include an assessment of archaeological significance and research questions; and:
  - i) The programme and methodology of site investigation and recording
  - ii) The programme for post investigation assessment
  - iii) Provision to be made for analysis of the site investigation and recording
  - iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - v) Provision to be made for archive deposition of the analysis and records of the site investigation
  - vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.
- B) The demolition/development shall take place/commence in accordance with the programme of archaeological works set out in the Written Scheme of Investigation approved under part A of this condition. The development shall not be occupied/used until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under part A of this condition and the provision made for analysis and publication where appropriate.

**18) Noise protection (including ventilation)**

No development shall take place above slab level until a Noise Protection Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include measures to protect the proposed development from noise arising from motor vehicle movements on Barnet Lane. The scheme shall ensure the indoor ambient noise levels in living rooms and bedrooms meet the standards within BS 8233:2014/The WHO Guidelines for Community Noise.

A ventilation system (mechanical or passive) shall be installed, with ventilation rates required to provide 4 ACH to habitable rooms.

Any alternative methods and rates will need to demonstrate that overheating will not occur which takes into account the need for windows to remain closed due to the external noise environment.

None of the dwellings forming part of the scheme shall be occupied until the measures relating to that dwelling have been implemented and are operational. The measures shall be retained and maintained thereafter.

**19) Biodiversity Enhancement Layout**

No development shall take place until a Biodiversity Enhancement Layout for biodiversity enhancements listed in the Ecological Appraisal (EDP, December 2022) and Ecological Technical Note (EDP, November 2023) shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Layout shall include the following:

- a) detailed designs or product descriptions for biodiversity enhancements; and
- b) locations, orientations and heights for biodiversity enhancements on appropriate drawings.

The enhancement measures shall be implemented in accordance with a detailed scheme for implementation to be approved by the Local Planning Authority and all features shall be retained in that manner thereafter.

**20) Drainage Management and Maintenance Plan**

The development hereby approved shall not be occupied until details of the maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be implemented prior to the first occupation of the development hereby approved and thereafter managed and maintained in accordance with the approved details in perpetuity. The Local Planning Authority shall be granted access to inspect the sustainable drainage scheme for the lifetime of the development. The details of the scheme to be submitted for approval shall include:

- i) A timetable for its implementation.
- ii) Details of SuDS feature and connecting drainage structures and maintenance requirement for each aspect including a drawing showing where they are located.
- iii) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime. This will include the name and contact details of any appointed management company.

### **21) Drainage Verification**

Prior to first use of each phase of the development a detailed verification report, (appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme), has been submitted to and approved in writing by the Local Planning Authority. The verification report shall include a full set of "as built" drawings plus photographs of excavations (including soil profiles/horizons), any installation of any surface water drainage structures and control mechanisms.

### **22) Fire Hydrants**

Prior to first occupation of the development, a scheme and strategy of implementation for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented in accordance with the approved details. The measures shall be implemented in accordance with the approved strategy for implementation and retained in perpetuity.

### **23) Imported Soil**

In the event soil is imported from an outside site, a scheme shall be submitted to, and approved in writing by the Local Planning Authority, verifying that any imported topsoil, is certified as suitable for the new and/or continued land use, prior to the first site usage.

### **24) Lighting Strategy**

Prior to first occupation, a 'lighting design strategy for biodiversity' in accordance with Guidance Note 08/23 (Institute of Lighting Professionals) shall be submitted to and approved in writing by the local planning authority. The strategy shall:

- a) identify those areas/features on site that are particularly sensitive for bats and other nocturnal animals and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed through provision of appropriate lighting contour plans and technical specifications so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and retained thereafter in accordance with the scheme. No other external lighting shall be installed.

### **25) Cycle Parking**

No development shall take place until a scheme for the parking of cycles including details of the design, level and siting of the cycle storage units has been submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of each individual dwelling/flat block, the approved cycle parking details for the specific plot(s) shall be fully implemented and thereafter retained for this purpose.

**26) Protection of protected species during construction**

All mitigation measures and/or works shall be carried out in accordance with the details contained in the Section 5 Ecological Appraisal (EDP, December 2022) and Ecological Technical Note Section 6 (EDP, November 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This will include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

**27) Levels and Ridge Heights**

Concurrent with the submission of the first reserved matters, as required by Condition 1, details against a fixed datum shall be submitted to and approved by the Local Planning Authority of the proposed ground levels, proposed finished floor levels and proposed ridge heights of the development hereby approved. Development shall be carried out in strict accordance with the approved details.

End of Schedule

## **ANNEX A: APPEARANCES**

### **For Hawridge Strategic Land Limited<sup>35</sup>**

Zack Simons and Isabella Buono  
Counsel for the Appellant

Instructed by Oliver Bell  
Nexus Planning

#### **They called**

Andrew Somerville  
BA(Hons) Dip TP MRTPI

Associate Director  
Nexus Planning

Tom Wigglesworth  
BSc MSc MCIEEM

Director  
Environmental Design Partnership Ltd

Will Gardner  
BSc(Hons) MSc CLMI

Director  
Environmental Design Partnership Ltd

Annie Gingell  
BSc(Hons) MSc MRTPI

Tetlow King Planning Ltd

Andrew Moger  
BA(Hons) MA MRTPI

Tetlow King Planning Ltd

Oliver Bell  
BSc MSc MRTPI

Director Nexus Planning

### **For Hertsmere Borough Council**

Josef Cannon<sup>36</sup> and Olivia Davies  
Counsel for the Local Authority

Instructed by Harvey Patterson  
Solicitor to the Council

#### **They called**

Martin Ross BA PGDip

Senior Planner  
Planning Strategy Team  
Hertsmere Borough Council

Neil Harvey  
BSc MCIEEM

Natural Environmental Manager  
Essex County Council

Stephen Kirkpatrick  
BSc BLD CMLI

Director Scarp Landscape Architecture Ltd

Joshua Lemm  
MA MRTPI

Senior Planning Officer  
Development Management  
Hertsmere Borough Council

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<sup>35</sup> Haroon Khan, Solicitor and Partner, Knights Solicitors assisted at the Round Table Discussion on Planning Obligations

<sup>36</sup> Josef Cannon KC (from 18 March 2024)



## **Interested Persons**

Nicola Miller	Local Resident
Patricia Strack	Chair Woodcock Hill Village Green Trust; Chair of Elstree Village Preservation Society; and member of Elstree and Borehamwood Green Belt Society
Georgina Forman	Statement on behalf of Councillors Morris Bright MBE and Dr Harvey Cohen (Elstree Borough Ward Councillors)
Leigh Renak	Local Resident
Councillor Michelle Vince	Hertfordshire County Council
Debra Kleinman	Local Resident
Michael Hirsch	Local Resident

## **ANNEX B: INQUIRY DOCUMENTS**

- ID1 Statement by Oliver Dowden MP
- ID2 Appellant Opening
- ID3 LPA Opening Statement
- ID4 Statement by Nicola Miller
- ID5 Statement by Patricia Strack
- ID6 Statement by Cllrs Bright and Cohen read by Georgina Foreman
- ID7 Statement by Leigh Renak
- ID8 Statement by County Councillor Michelle Vince
- ID9 Photographs Submitted by Debra Kleinman
- ID10 Statement by Michael Hirsch
- ID11 Committee report for Land off Furzehill Road and Barnet Lane
- ID12 Appellant's Ecology Supplementary Note
- ID13 Housing Land Supply Schedule of Disputed Sites
- ID14 Updated Round Table Conditions
- ID15 Response to Supplementary Notes on Ecology Matters
- ID16 Closing Submissions for the Council
- ID17 CIL Compliance Statement
- ID17a Appendix 1 to CIL Compliance Statement
- ID17b Appendix 2 to CIL Compliance Statement
- ID18 Closing Submissions for the Appellant
- ID19 Email and enclosure from Michael and Lorraine Stock
- ID20 Barnet Lane Highways Technical Note
- 1D21 Draft s106 Agreement
- ID22 Housing Land Supply Position and revised schedule following Round Table Session
- ID23 Executed version of s106 Agreement (Counterparts)
- ID24 Regulation 18 Plan – Letter from the Council
- ID25 Barnet Lane Position Statement of the Appellant – Implications of the emerging Hertsmere Local Plan (including Appendices 1 and 2)