

HUTCHINSONS

APPEAL BY

LEGAL & GENERAL AFFORDABLE HOMES

**LAND TO REAR OF 248 HART ROAD
THUNDERSLEY**

STATEMENT OF CASE

**ON BEHALF OF
CASTLE POINT BOROUGH COUNCIL**

**LPA Ref: Ref: 21/1137/FUL
PINs Ref: APP/M1520/W/22/3310483**

February 2023

HUTCHINSONS
15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

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APPENDICES

1. Appeal Decision Ref: APP/M1520/W/19/3240145. Land Rear of 301 Rayleigh Road, Thundersley
2. LPA suggested conditions

1 STATEMENT OF EXPERIENCE

- 1.1 This statement has been prepared by Alison Hutchinson of Hutchinsons. She has a degree in Town and Country Planning and is a Member of the Royal Town Planning Institute. Alison Hutchinson is a Partner in Hutchinsons, a planning practice that operates from Kimbolton in Cambridgeshire and has over 35 years' experience of planning in both the public and private sectors.
- 1.2 Hutchinsons was established in 1991 and advises clients in both private and public sectors on a wide variety of planning issues. Prior to joining Hutchinsons in 1996 Alison Hutchinson was Associate Partner in The Development Planning Partnership (DPP), acting on behalf of such clients as Tesco Stores Ltd and the former Commission for the New Towns as well as District Councils.
- 1.3 Alison Hutchinson has experience in dealing with a wide range of Development Management issues throughout the country, having started her career in Local Government where she gained extensive experience in development control with responsibility for dealing with all types of planning applications including housing.
- 1.4 Alison Hutchinson has acted on behalf of District Councils for many years and has acted as their expert planning witness at a large number of their appeals. She has also been retained by several Councils to help process some of their major applications.
- 1.5 This Statement is prepared with regard to the advice in the Procedural Guide: Planning Appeals – England (updated 21 December 2022).

2 INTRODUCTION AND BACKGROUND

- 2.1 The application the subject of this appeal was submitted in December 2021 and sought detailed planning permission for the demolition of the existing building and stables and to construct 44 affordable dwellings including open space, playspace, landscaping and associated access, infrastructure and parking arrangements on land to the rear of No 248 Hart Road in Thundersley.
- 2.2 The application as originally submitted sought permission for 46 affordable dwellings and was accompanied by the relevant detailed plans together with a number of supporting documents which are listed in the Statement of Common Ground.
- 2.3 The application was subject to normal consultations and a summary of the responses of the statutory consultees are set out in the officer's report (CD.A3) and have been enclosed with the Council's questionnaire response for this appeal. The majority of the consultee responses confirmed that they had no objections to the proposal subject to the imposition of conditions or requirements of a Section 106 Agreement.
- 2.4 The application was the subject of an initial holding objection from Essex County Council in its capacity as Lead Local Flood Authority
- 2.5 In February 2022 the Council received an amended application form together with revised plans which showed a proposal for 44 dwellings. A Noise Assessment was also received as well as updated and revised drainage details, the latter resulting in the LLFA withdrawing its objection.
- 2.6 Further drainage details were received in March 2022 and raised no further additional concerns by the LLFA.
- 2.7 The application was referred to the Council's Development Management Committee on the 7 June 2022 with an officer recommendation of approval. The Committee resolved to refuse the application for the reasons set out in the Reasons for Refusal in the decision notice which is dated 14 June 2022. These are set out below for convenience:

1. The proposal represents inappropriate development in the Green Belt as

defined by the National Planning Policy Framework. Such development will only be permitted if very special circumstances exist to justify its inappropriateness. It is not considered that very special circumstances have been demonstrated in this case which either in isolation or combination carry sufficient weight to outweigh the harm to this part of the Green Belt. The proposed development is therefore contrary to Government advice as contained in the National Planning Policy Framework.

- 2. The proposed development is premature in that it seeks to secure the development of land in the face of unresolved objections to Policy HO20 of the unadopted Castle Point Local Plan (2018 - 2033).*

- 2.8 The appeal was submitted on the 4 November 2022.
- 2.9 Following the refusal of planning permission, the Borough Council formally withdrew its New Castle Point Local Plan 2018-2033 (dated March 2022) on the 15 June 2022. At that stage, the new Local Plan had been through examination and been found sound but was withdrawn prior to adoption. Although the policies and proposed allocations of that New Local Plan are no longer applicable, the Council accepts that some of the evidence base documents remain relevant as does the Examining Inspector's post hearing letter of the 6 September 2021 (CD.F1) and his later Report dated 3 March 2022 (CD.F2).
- 2.10 Following the withdrawal of the New Local Plan, the Council confirmed that it was no longer pursuing Reason for Refusal number 2.
- 2.11 A Planning Statement of Common Ground (SoCG) between the Appellant and the Local Planning Authority is currently under discussion at the time of preparing this Statement of Case. It is intended that it will provide a description of the appeal site and surrounding area together with a description of the development proposals, and identifies relevant planning policies and planning history. The SoCG also sets out the areas where the parties agree and disagree.
- 2.12 The Appellant has submitted a draft S106 Agreement. The Council is currently reviewing its contents and it is expected that an agreed S106 will be completed before the date of the Hearing on the 29 March 2023.

- 2.13 A CIL justification which justifies the need for the agreed requirements of the S106 will also be prepared and submitted. It should be noted that whilst the Council currently does not apply CIL, the Council has consulted on a draft Charging Schedule which was the subject of Examination in October 2022. Following consultation on further evidence submitted by the Council in response to the Examiner's Post Hearing Letter and Note, it is expected that CIL will be applied within the Borough from 1 April 2023.
- 2.14 This Statement of Case will explain the Council's case in respect of Reason for Refusal No 1 which relates solely to concerns regarding the impact of the development on the Green Belt and will consider whether there are any material considerations to justify the grant of planning permission.

3 PLANNING HISTORY & BACKGROUND

- 3.1 The draft Statement of Common Ground confirms that the land the subject of this appeal has not been the subject of any relevant planning applications in recent years. There were a number of applications for residential development in the 1980s but all were refused planning permission. There have been no applications since then.

Surrounding Area

- 3.2 Planning permission was refused for 19 dwellings on land at the rear of 301 Rayleigh Road, Thundersley under 19/0545/OUT. The subsequent appeal¹ was dismissed in August 2020 and the decision is contained at Appendix 1 to this statement.
- 3.3 Planning permission was granted under 19/0549/FUL for the demolition of existing buildings and the erection of nineteen houses with access on land off The Chase, directly to the south of the Cedar Hall Day School, on 31 March 2020. Access was to be taken from The Chase.
- 3.4 The application site was a disused Nursery/ Garden Centre that had been on the site since the 1950's and contained a number of outbuildings including stables, poly-tunnels base blocks, a swimming pool and a bungalow.
- 3.5 The planning permission has been implemented.

¹ APP/M1520/W/19/3240145

4 THE DEVELOPMENT PLAN

4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. It follows therefore that where proposals are contrary to policies of the Development Plan, then development should be refused unless there are material considerations that indicate otherwise.

4.2 The development plan for the site comprises the Castle Point Borough Local Plan 1998 (CD.C1), the Essex Minerals Local Plan 2014 and the Essex and Southend-on-Sea Waste Local Plan (July 2017). There are no concerns relating to minerals or waste in this case and therefore the only relevant plan for this appeal is the 1998 Local Plan.

Castle Point Local Plan 1998

4.3 The current Local Plan was adopted in 1998 and intended to cover the period up to 2001.

4.4 The Secretary of State issued a saving direction on 20 September 2007 which saved the majority of policies in the Local Plan. However, Policy H1 (Residential Development) which made provision for additional housing in the Borough over the plan period was not saved. Similarly, Policy GB1 (Control of Development) which related to control of development in the Green Belt was also not saved. As a consequence, the Council has relied, and continues to rely, on Government policy when assessing housing requirements and therefore calculates the housing need based on the standard method as required by Paragraph 74 of the NPPF. Applications for development in the Green Belt are assessed against Government policy as currently set out in Chapter 13 of the 2021 National Planning Policy Framework.

4.5 The Proposals Map of the adopted 1998 Local Plan identifies the majority of the appeal site as Green Belt. The Proposals map shows that existing housing and their gardens along Hart Road, including no 248 Hart Road, is excluded from the Green Belt. The land to the south of those boundaries fall within the statutory Green Belt.

4.6 The reasons for refusal do not cite any relevant Local Plan Policies and it is

accepted that the appeal proposal accords with the relevant Local Plan policies, including those relating to design and layout as set out in the officer's report to Committee.

Supplementary Planning Guidance

4.7 The Council has adopted various SPG's including the following:

4.8 **Residential Design Guidance** adopted 2012

4.9 **Parking Standards Design and Good Practice** adopted in 2010.

4.10 **Developers Contributions Guidance** SPD adopted in 2008 forms the basis for discussions on individual applications and the drafting of planning obligations to deliver improved infrastructure, environmental enhancements and community facilities, such as education, health care, leisure activities and open space. It provides guidance on the nature and levels of contributions likely to be required as part of development proposals.

4.11 The SPD also provides guidance on the level of affordable housing the Council will seek from developments. Paragraph 6.13 confirms that, based on a 2004 Housing Need Survey, 35% of all new housing should be affordable.

Emerging Local Plan

4.12 Following the withdrawal of the draft Local Plan in June 2022, the Council adopted a new Local Development Scheme in November 2022. This advises that the consultation on the Issues will take place between January to August 2023 with formal submission of the Local Plan being in June 2025, the Examination taking place later that year and Adoption anticipated in March 2026. At present, no document has been published for consultation.

5 HOUSING LAND SUPPLY

- 5.1 The Council published its most up to date housing supply figures in January 2022 in its Annual Monitoring Report (CD.D1) and confirmed that the Council could not demonstrate a 5 year supply of housing land. The latest supply figure is 1.86 years.
- 5.2 The Council accepts that it has a long-standing under-delivery of housing as confirmed by the AMR. The current required housing provision is 355 dwellings per year and according to the Housing Delivery Test, the Council only achieved delivery of 442 or 48.3% of the required dwellings over the last three years (2019 to 2022) against a covid adjusted target of 916. The majority of the provision has been on brownfield sites.
- 5.3 In terms of affordable housing, the delivery has also been poor over recent years with no affordable housing being delivered in 2021/22², only 13 being delivered in the previous year and none in the year before that. Even in the 10 years prior to those years, delivery was limited and varied between 0 and 55. The SHMA Addendum 2017 (CD.E1) indicated that there was a need for up to 288 homes per annum to be affordable. This represents 81% of the current annual housing requirement and it is clear that this is unfeasible. However, it is also clear that the Council is not achieving anywhere near the figures that are required to address affordable housing need and is unlikely to do so until it has an up to date Local Plan in place.
- 5.4 It is evident from the above that the Council is not able to provide sufficient homes, either market or affordable to meet its requirements and there is a pressing need to deliver more housing both market and affordable in the Borough.
- 5.5 It is accepted that the tilted balance in favour of sustainable development would normally be engaged as a result. However, in this case, Footnote 7 to paragraph 11(d) is applicable and the appeal site is within the Green Belt where the NPPF policies provide a clear reason for refusing inappropriate development. As a consequence, the tilted balance is disengaged. It is noted that the Appellant considers that very special circumstances exist and that the tilted balance is therefore engaged. Section 6 therefore considers the Very Special Circumstances

² AMR 2021 – 2022 Figure 15.

advanced by the Appellant.

6 THE CASE FOR THE LOCAL PLANNING AUTHORITY

- 6.1 The Council has refused planning permission on Green Belt grounds as it considers that very special circumstances have not been demonstrated to overcome the harm to the Green Belt. The Council raises no objections to the detailed design of the dwellings or the layout. Furthermore, following the withdrawal of the New Local Plan, the Council confirmed that it did not intend to pursue Reason for Refusal No 2. As a result, the Council's case relates solely to the concerns about the impact of the proposal on the Green Belt as set out in Reason for Refusal No 1 and explained below.

Green Belt

- 6.2 It is common ground between the parties that the appeal site lies within the Green Belt and that the appeal proposals represent inappropriate development such that very special circumstances must be demonstrated to justify the development of the site and the setting aside of the Green Belt designation. The case in some respects is simple in that the Appellant considers that very special circumstances exist and the Council does not.
- 6.3 The NPPF confirms that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It confirms that the essential characteristics of Green Belts are their openness and their permanence.
- 6.4 The appeal site sits within an area of Green Belt which forms a pocket of open land within Thundersley, thereby separating the various areas of the settlement. The Council carried out a review of the Green Belt in 2018 as part of its evidence base for the New Local Plan. That review the – Castle Point Borough Green Belt Review 2018 – Part 1 (CD.E4), found that the area in which the site was located served some of the five purposes of Green Belt set out in paragraph 138 of the NPPF.
- 6.5 The Review divided up the areas of Green Belt in the Borough (as defined by the 1998 Local Plan) into 28 parcels which were then assessed against the individual purposes of the Green Belt to identify the contribution, if any, that each parcel made to those purposes. The appeal site formed part of Parcel 6 which was described as:

a tract of predominantly open land largely encircled by the urban settlement of Thundersley. It is an area characterised by a mixture of plots of land which are divided into lateral strips. There are a number of uses within the parcel including residential dwellings, a school, a leisure centre and playing fields.

- 6.6 The description and assessment of Parcel 6 (contained at page 81 of the Review) found that the parcel had a moderate contribution towards Purpose No 1 in checking the unrestricted sprawl of large built-up areas and a minor contribution towards Purpose No 3 in assisting in safeguarding the countryside from encroachment.
- 6.7 The Review considered that many of the boundaries of this parcel were not particularly robust being formed by residential curtilages. However, it also noted that high density residential development had been resisted across all of the parcel although there was residential ribbon development along The Chase in the centre of the parcel and along other roads that come off The Chase. Parcel 6 also comprised residential dwellings and their curtilages, extending along the A127 and parts of The Chase, the Cedar Hall School and associated uses adjacent to the appeal site and a leisure centre located to the east of the A127. The Review therefore considered that there was a lack of a strongly defined edge between the built-up area and the parcel.
- 6.8 In terms of the third purpose, the review considered that the parcel made a minor contribution towards safeguarding the countryside from encroachment. While the area is gently sloping and contains areas of woodland, pasture with hedgerows and grassed areas the Review identified plotland developments across the middle of the parcel which it considered to be inappropriate development and a semi-rural perception through the main routes across the parcel. Furthermore, the parcel was also poorly related to the wider countryside system.
- 6.9 The Review considered that the parcel had a limited contribution being a fairly isolated Green Belt pocket but that it had a role in providing a recreational resource to residents in Hadleigh and Thundersley.
- 6.10 The appeal site emerged as part of the proposed allocation HO20 during the now withdrawn New Local Plan. The site was considered as one of several parcels of

land which eventually were merged together to form allocated site HO20 in the 2018 Strategic Housing Land Availability Assessment (SHLAA) (CD.E2). The appeal site was identified as site S0078 and formed one of several sites in the area, including the land to the immediate south (Ref S0079) and the former nursery to the west – S0392, that were assessed in the SHLAA. Other strips of land were included including the land to the east (S0412) subject to the 2020 appeal³ (Appendix 1) together with larger parcels on land further west which sat to the north and south of The Chase.

- 6.11 The SHLAA took no account of Green Belt designations but considered various aspects of each individual site put forward in the various call for sites, including capacity, suitability etc. The appeal site (S0078) and the adjoining land (S0079) were considered to have capacities of 35 and 54 dwellings respectively and to have medium suitability with mitigation required to ensure suitability. The suitability table⁴ (CD.E3) identified matters which included potential air quality and contamination as requiring possible mitigation.
- 6.12 The Green Belt Review Part Two undertaken in 2019 (CD.E5), followed an acceptance that the Borough's housing need would necessitate the development of housing on Green Belt land and it was therefore intended to assess the degree of harm on the Green Belt of allocating sites that had been put forward for housing. The appeal site was included within that second Review as part of the much larger parcel SH18 which comprised all the Green Belt land contained in Parcel 3 apart from the area to the east of the A127.
- 6.13 The second Review repeated much of the Part One findings and moved on to consider the degree of harm of releasing the whole of site SH18 from the Green Belt (page 56). The Review found that whereas the first Review considered that Parcel 3 has a moderate contribution towards Purpose no 1 and a minor one to Purpose No 3, Parcel Sh18 would have a moderate degree of harm to both purposes. It found that much of the proposed development site was rural in nature but again attention was drawn to the lack of a strongly defined edge with the existing built-up area. Any development of site SH18 would constitute an infill of land within Thundersley and was considered therefore to be in keeping with the

³ APP/M1520/W/19/3240145

⁴ SHLAA Review 2018 – Volume 2 – Schedule D - Suitability

existing settlement pattern. The impact on the wider countryside system in the Borough was considered to be minimal because site SH18 was largely cut off from the wider rural system. However, in the local context the site represented a rural break, albeit one which has been relatively significantly encroached.

- 6.14 The Review regarded the release of land comprising SH18 from the Green Belt as amounting to the residential infilling of Thundersley and not impacting on the integrity of the wider Green Belt. However, development of the site would sever the land currently developed as playing fields associated with educational facilities from the Green Belt.

- 6.15 The Review concluded that:

The release of land comprising SH18 from the Green Belt would amount to residential infilling and would leave just part of the eastern and north western boundary adjacent to Green Belt. The harm arising from this development proposal could be managed through the appropriate design and layout of development on the site, accompanied by the use of strong landscaped boundaries. Much of the site boundary and land within the site already benefits from mature trees which could be retained.

- 6.16 The whole of parcel SH18 was therefore put forward for as an allocation of 28ha for 340 dwellings in the New Local Plan and subject to Policy HO20.

- 6.17 In his letter of the 6 September⁵ (CD.F1), the examining Inspector found that the site capacity of 340 dwellings should be increased to 450 to optimise the use of the land. The main modifications put forward by the Council increased the capacity of site HO20 to 430 dwellings (together with a 60 bed care home)(CD.F3). The policy also required that a Master Plan covering the allocated 28ha was to be prepared within six months of the adoption of the Plan, which was to establish the capacities of the development parcels within the overall site and would require all development parcels to have regard to the masterplan.

- 6.18 The Examining Inspector confirmed Policy HO20⁶ as modified and highlighted that the proposed allocation would be subject to the preparation of a master plan, which

⁵ Inspector's Post examination letter dated 6 September 2021

⁶ Report on the Examination of the New Castle Point Local Plan

he considered necessary given the complexities of the site and that it should be used in the development management process. He also stated that given the character and appearance of the area, for effectiveness the Policy should be amended to be clear as to the urban design approach required in order to create an attractive, green, parkland environment, integrated into the existing landscape, whilst making effective use of land.

- 6.19 However, whilst the New Local Plan was found sound by the Inspector in his March 2022 report, it was not adopted. The Council formally withdrew the Plan on the 15th June 2022, after the resolution to refuse the appeal application. As a consequence, the appeal site remains in the Green Belt as set out in the adopted Local Plan.

Harm to the Green Belt

- 6.20 As the proposed development represents inappropriate development within the Green Belt it is, by its very nature, harmful.
- 6.21 Paragraph 149 of the NPPF provides instances where the construction of buildings within the Green Belt may be regarded as an exception to inappropriate development. The appeal proposal does not form one of the exceptions listed. Although the appeal proposal is for affordable housing, paragraph 149 f) applies to limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites). Firstly it is considered that a development of 44 dwellings does not represent 'limited affordable housing'. Furthermore, the adopted Local plan has no policies relating to affordable housing for local community needs nor allowing rural exception sites and therefore, the appeal proposal cannot be considered against paragraph 149 f).
- 6.22 The SHLAA was the only assessment of the development potential of the appeal site in its own right. The later reviews, including the second Green Belt Review, all considered the appeal site as part of the larger Parcel 3 or SH18. A continuing theme for that larger parcel was that its boundaries lacked a strongly defined edge due in part to them being the gardens of dwellings and that its development should be managed, hence the requirement of Policy HO20 for the 28 ha to be developed in accordance with a Masterplan.

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- 6.23 The current proposal seeks to develop a small part of that larger parcel. The appeal site's boundaries are formed to the north and northeast by existing dwellings with the Cedar Hall School to the west. The site comprises two fields with the northern field containing the stables along the boundary with the school and the manège. This field extends some 60m southwards up to the fence line which continues along the same line as the southern boundaries of properties in Greenleas. The northern field is effectively enclosed by existing development on three sides. However, the appeal proposal extends considerably southwards well beyond this fence line by a further 120m. This southern field is open and flanked on its eastern and southern side by woodland and other open fields. To the west is the playing field and play ground of the school.
- 6.24 The appeal proposal would effectively extend housing well beyond the existing boundaries of the Green Belt. Those boundaries would not be definitive nor would they remain permanent. The development of these two fields would result in an ad hoc development that relates poorly to existing development and also to other areas of the Green Belt. The proposed development would effectively isolate other areas of the Green Belt, particularly the area to the east extending between the appeal site and Rayleigh Road and also the area to the south which extends southwards down to The Chase. The appeal proposal would cut off these two areas and create two small, isolated pockets of Green Belt, effectively reducing the effectiveness of this part of the Green Belt and its recognised contribution towards checking unrestricted sprawl and safeguarding the countryside from encroachment.
- 6.25 The Council fully accepts that the appeal site was identified for development in the withdrawn New Local Plan. However, it was identified as part of a significantly larger area of land which was intended to be comprehensively developed. Indeed, this was considered necessary by the Examining Inspector who considered that any development should be secured by, and be in conformity with, a Masterplan (CD.F2 paragraph 108 & 109). The former allocation HO20 is an irregular shaped area in a number of different ownerships and the Masterplan was intended to ensure that development would take place in a comprehensive way. This would reduce the risks of isolating and separating areas of land and ensuring that any development took place in an integrated way. The Council accepts that the policy is no longer applicable but it remains the case that ad hoc development of small

parcels of land within this area, such as the appeal site, will result in the fragmentation of this part of the Green Belt reducing its ability to contribute to the purposes for which it was designated. Piecemeal development of this nature would also prevent any comprehensive approach to be taken in the future should the land be considered for future removal from the Green Belt.

- 6.26 Some fragmentation has already occurred with the development of the former Chase Nursery to the southwest of the site. That development of 19 dwellings was granted planning permission in 2019 on the grounds that the site was a brownfield site and already occupied by a number of buildings as well as being subject to an extant planning permission for redevelopment. The planning permission has been implemented and the development has separated the larger area of Green Belt and its continuity to the north of The Chase. The development of a further small parcel as proposed by this appeal will further erode this continuity and the purpose of this area of Green Belt in restricting urban sprawl and safeguarding the countryside from encroachment.

Harm to Openness

- 6.27 The Framework also makes it clear that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open (paragraph 137). The essential characteristics of Green Belts are their openness and their permanence. Although openness is not defined in the Framework, it is considered that it can be taken as the opposite of urban sprawl.
- 6.28 The Council contends that the appeal proposal will not keep the appeal site open and will constitute urban sprawl.
- 6.29 Only a small part of the appeal site lies outside the Green Belt. The dwelling and curtilage of No 248 is excluded from the Green Belt and the Council raises no objections to the demolition of No 248 Hart Road and its redevelopment. The rest of the appeal site, however does lie within the Green Belt. It is accepted that the stables, located on the north west boundary, may be regarded as previously developed but they occupy a small area of the appeal site and their impact on the openness of the Green Belt is minimal. Similarly, the adjacent manège, whilst affecting the appearance of the Green Belt, does not detract from its openness, being essentially a surface treatment, although it adds to the urbanisation of the

northern part of the appeal site. The remainder of the land is grass paddocks that are open both visually and physically and which also lead to further open land to the south and east.

- 6.30 The appeal proposal is for 44 dwellings to be served by a new access from Hart Road. The submitted plans show a relatively dense and regimented form of development which extends housing close up to the boundaries of the site and therefore adjacent to the remaining areas of Green Belt. The residential development occupies the whole site with only a small area of open space in the southern portion of the site.
- 6.31 The site currently provides an open rural area of land. The proposal would result in the loss of the undeveloped nature of the site so as to result in a spatial diminution of the openness to the Green Belt. The proposed housing would occupy the majority of the site, and where visible, would also result in a loss to Green Belt openness as perceived visually.
- 6.32 The Council considers that the virtual total coverage of the site and consequent urbanisation of its appearance, coupled with the encroachment into the countryside, has a significant adverse impact on the openness of the Green Belt. The proposal therefore conflicts with national policy through being inappropriate development which would also reduce the openness of the Green Belt and thus further conflict with its purpose for checking urban sprawl and safeguarding the countryside from encroachment.
- 6.33 It is noted that the Appellant has submitted a Landscape and Visual Appraisal (LVA) with their appeal. The LVA concludes that the effects on both landscape and visual amenity are limited to and are experienced at a local and site based level. The Council does not disagree with the Landscape Appraisal and has not alleged visual impact in its reason for refusal. It is considered that matters of openness with regard to Green Belt and visual impact are not necessarily the same.
- 6.34 In this case, the LVA accepts that the development will result in the site undergoing a change from paddocks to housing and assesses the effects as adverse on the landscape of the Site itself but considers that neither the site nor the surrounding area are considered to be of high sensitivity nor are they valued landscapes as

defined by the NPPF. The Council accepts the findings of the LVA that the development will have an adverse impact on the landscape and considers that in this, the LVA confirms the harmful loss of openness of this part of the Green Belt and therefore supports the Council's case on this matter.

- 6.35 It has been demonstrated that the appeal proposal is harmful to the Green Belt by way of being inappropriate development and also through loss of openness. Substantial weight must therefore be attached to these harms in accordance with paragraph 148 of the NPPF.
- 6.36 The NPPF advises that development should not be approved except in very special circumstances and that they will not exist unless the potential harm to the Green Belt by reasons of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations (paragraph 148). The Council therefore considers if there are any other considerations that should set aside Green Belt policy in this instance.

Other Considerations – Very Special Circumstances

- 6.37 The Appellant has stated that very special circumstances exist for this proposal. The Planning Statement that accompanied the planning application listed what the applicants considered to be very special circumstances. Many of those put forward relied upon the fact that the site was identified as a proposed allocation in the New Local Plan. However, that Plan was not adopted and although the formal resolution to withdraw the Local Plan took place after the decision on the appeal application, a resolution had already taken place not to proceed with the New Local Plan. As a result, the Council did not accept that the arguments put forward by the applicants at that time amounted to very special circumstances sufficient to set aside the adopted Green Belt and accordingly refused the application.
- 6.38 The Appellant has again advanced an argument for very special circumstances in their Statement of Case and argue that the benefits listed at paragraph 10.1.2 of that document collectively outweigh the harm to the Green Belt and '*thus that VSCs do exist that justify the granting of planning permission*'. The inference is drawn that the benefits listed and considered below represent very special circumstances.

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- i. *‘The provision of much-needed affordable housing, targeted to meet identified local needs’.*

6.39 Section 5 of this Statement confirms that the Council is currently only able to demonstrate a 1.86 years⁷ supply of housing land and the Council agrees with the Appellant that the Borough Council has long standing issues with under-delivery of housing as confirmed by the AMR. Furthermore, with the withdrawal of the new Local Plan, the Council is currently in a position whereby it cannot identify sufficiently appropriate sites for development and the position is unlikely to improve in the short term.

6.40 It is also accepted that the withdrawn New Local Plan identified sites for housing to be removed from the Green Belt and, as stated above, the appeal site formed part of the 28ha intended to deliver 420 dwellings under proposed allocation under Policy HO20. The Council accepts that the identified housing allocations, including the 420 dwellings (HO20) will not come forward so quickly now that the Local Plan is withdrawn and there will continue to be a need for sites to come forward to provide housing in the Borough. It is also accepted that some of those sites may need to be located in the Green Belt. However, it is not considered that there is sufficient justification for this site to be developed for housing such that the need would amount to very special circumstances.

6.41 As explained above, the appeal site was considered to be included as part of the larger HO20 allocation site. That site comprised many ownerships and therefore part of the requirement of the policy, and therefore part of its justification for being released from the Green Belt, was that it should be subject to a masterplan to ensure that it came forward and was developed comprehensively.

6.42 It is accepted that the provision of 100% affordable dwellings, resulting in 44 new affordable dwellings, in an area where there is, and has been, a long standing under supply of housing will make a significant contribution towards the Council's affordable housing supply, and its housing land supply generally, and this represents a substantial benefit of these proposals. However, the development will result in the fragmentation of this part of the Green Belt, isolating pockets of

⁷ Annual Monitoring Report 1 April 2021 to 31st March 2022

land and undermining the integrity of this area of the Green Belt.

- 6.43 The proposal for affordable housing coming forward on this site is agreed to be a benefit as is the provision of any affordable housing and one to which substantial weight can be attached in the current policy vacuum. However, the Council does not consider that this alone represents the very special circumstances required by the NPPF.

ii. The increase in 'Biodiversity Net Gain' ('BNG').

- 6.44 The Appellant argues that the increase in Biodiversity Net Gain and effective doubling of hedgerow habitat is clearly a significant benefit of the Proposed Development that is considered should be afforded at least moderate weight.

- 6.45 The Council does not dispute that securing increased net gain on the site is a benefit. The site is identified as part of the Thundersley Plotlands Local Wildlife Site but the value of the LoWs has eroded over recent years so that the 2019 Wildlife Sites Review amended the area by removing land to the south of The Chase. The appeal site and adjoining land remain as part of the Local Wildlife Site.

- 6.46 Paragraph 174 d) of the NPPF requires improvements to net gains for biodiversity, whilst the Environment Act 2021 requires at least a net increase of 10% on all planning permissions granted after an as yet, unspecified date. The Council considers therefore that 10% net gain should be the minimum standard sought in respect of all proposed development.

- 6.47 It is accepted that the appeal proposal achieves a significant increase in hedgerow habitat biodiversity on the site and that this is considered to be more than adequate to compensate for the loss of the degraded grassland and scrub within the LoWS designated area. The Council does not disagree with the Appellant that moderate weight can be given to the net gain to be achieved on site.

vii) Significant aspects of the proposed housing specification, especially the Net Zero Carbon Emissions measures.

- 6.48 The Appellant considers that these also represent a benefit of the proposed development and that it that should be afforded at least significant weight. It is noted that this is not one of the very special circumstances put forward at the

application stage which merely advanced a case for high quality design.

- 6.49 The Appellant has submitted a Net Zero Carbon Strategy at Appendix 14 of their statement of case which identifies ways in which they propose to implement their strategy. The strategy is based on achieving measures to reduce energy use by the construction of the building and the provision of energy efficient heating and lighting. The Strategy states that the proposals will go beyond the minimum values of Part L of the 2022 Building Regulations and will be more efficient than that required by the Building Regulations.
- 6.50 However, Part L of the current Building Regulations which came into force from 15 June 2022 brought in higher standards that now require reduced carbon emissions by at least 31% (compared to the old regulations). This is the first step towards the Future Homes Standard in 2025, which is intended to reduce emissions by 75 to 80% (again compared to current standards). It is understood that following consultation in 2023, the Government intends to publish the Future Homes Standard (FHS) in 2024 and then bring it into force in 2025. All new homes will then be 'zero carbon-ready', meaning that they will be zero carbon once the electricity grid has been decarbonised. In these circumstances, the Council would expect that all new housing, including affordable homes, should be future proofed to ensure that it complies with the Future Homes Standard which is to be introduced in only 2 years time. As a consequence, whilst it is welcomed that the Appellant is seeking to make the housing net zero carbon, and that measures are being proposed slightly earlier than any legal requirement, the Council does not regard this as a significant benefit of these proposals.
- 6.51 On the contrary, the NPPF requires that homes should be provided that meet the needs of present and future generations and also to mitigate and adapt to climate change, including moving to a low carbon economy (paragraph 8). These homes are intended for people who need affordable homes and part of their need must also be that they require homes that are affordable to run and live in both now and in the future.
- 6.52 The Council therefore attaches only limited weight to the introduction of a net zero carbon strategy for these homes as it is now an expectation that development contributes towards moving to a low carbon economy. The provision of these homes as net zero carbon cannot therefore be considered to represent a very

special circumstance.

iv) Collectively, the many additional residual positive economic, social and environmental impacts represent a further significant and substantial public benefit.

- 6.53 The Appellant argues that the collective additional benefits of the proposal should be afforded at least moderate weight. They list these benefits at Paragraph 9.4 of their Statement of Case and include Economic, Social and Environmental benefits. The Council accepts that new homes provide direct economic benefits through increased spending power of residents as well as during construction. Further, that new housing has social benefits in the provision of new housing and accessibility to existing services and contribution towards a strong and vibrant community. However, the social aspect of the development is considered above in the provision of affordable housing and therefore, whilst it is recognised as a benefit, the Council does not consider that its provision represents an additional benefit.
- 6.54 The Appellant also refers to additional public open space, including for play and recreation but the proposals only provide what is required to make the current proposals acceptable in open space terms. The POS is located at the southern end of the development and only accessible to the residents and via the proposed access road. Although a linkage is shown to the south, there is no public access to the wider area and therefore no wider public benefit can be attached to the provision of the POS.
- 6.55 The Appellant also argues that there are environmental benefits through the provision of net zero homes, new native species planting and the provision of open space. Again these matters have already been considered under other benefits and the Council does not consider that they can be considered as additional benefits which would effectively double count any benefits that are attached to them.
- 6.56 The Council accepts that residential development brings associated benefits as set out above and that weight can be attached to those benefits. However, those benefits apply to most if not all residential development and they are not and cannot

be regarded as very special circumstances. Should they be considered to be, then housing development could take place at will within the Green Belt.

Appeal Decisions

- 6.57 The Appellant has also referred to two appeal decisions to support their argument that a significant lack of a five year supply of housing land and/or provision of affordable housing can be considered to be very special circumstances. The two appeal decisions, contained at the Appellant's Appendix 8 of their Statement of Case, relate to three different local planning authorities in Hertfordshire which also had poor performance in delivering housing in their areas. In the first (Colney Heath) the Inspector considered that the provision of 100 market, affordable and self-build houses represented very special circumstances sufficient to grant planning permission. In the second (Codicote), the Inspector considered that the provision of 147 market and affordable dwellings and land to extend the existing primary school amounted to very special circumstances.
- 6.58 Although there is a common denominator in respect of limited five year supply of housing land, the circumstances of both those appeals are significantly different to the current one. Both sites proposed a comprehensive development of larger sites that did not leave small isolated and unconnected pockets of Green Belt. In St Albans the site would provide clear boundaries being surrounded by roads and existing development. In the Codicote case, the Council had also advised the Examining Inspector that it would be prepared to release Green Belt sites in advance of the adoption of the Local Plan. Those circumstances do not pertain to the current appeal proposal.
- 6.59 The Council is aware that appeal decisions have occasionally considered that lack of housing supply represents a very special circumstance but it maintains that each case must be determined on its own merits and that two appeal decisions in Hertfordshire do not set a precedent for the current appeal. Indeed the Inspector for the Colney Heath appeal commented that:

Rarely will any other appeal decision provide an exact comparison to another situation. In some of the cases referred to, there are similarities in the size and scale of the proposal, in other cases there are entirely different planning policy positions, housing supply considerations, land use considerations,

locational characteristics, main issues and other factors which have been weighed in the balance. Furthermore, it remained common ground that each appeal should be considered on its own merits as is the case here. It is for the decision maker in each case to undertake the planning balancing exercise and as a result, the weight I have attached to these other appeal cases is limited.

- 6.60 However, a similar site to the current appeal site was considered at appeal and was dismissed. The 2020 Appeal decision contained at Appendix 1 to this Statement was for land directly adjacent to the current appeal site. It was proposed to be accessed from Leighfields to the north and would involve development within the LoWS, similar to the current appeal.
- 6.61 The proposal was for 19 dwellings, also to be 100% affordable and the Council's housing supply was recorded to be 1.1 years (paragraph 29). In that case, the Inspector recognised the provision of housing was a benefit but gave limited weight to it. The Inspector did not consider that very special circumstances existed that justified the inappropriate nature of the development.

Conclusions on Very Special Circumstances

- 6.62 Whilst the Council accepts that the matters being advanced by the Appellant are planning benefits to this scheme, it does not agree with the Appellant that they are individually or collectively of sufficient weight in this instance to be considered as the very special circumstances required by the NPPF to set aside Green Belt policy.
- 6.63 The Council is concerned however, that if any, or all, of the Appellant's benefits are considered to represent the very special circumstances needed to justify the grant planning permission for a development that will result in the fragmentation of this area of the Green Belt and the effective isolation of other parcels of Green Belt land, it may set a precedent for those other small parcels of land to be released. The fragmentation created by the current would result in a similar piecemeal development with no integrated approach to secure any infrastructure enhancements or linkages other than that required on site to make each individual site acceptable.

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- 6.64 Whilst each application and appeal must be treated on its individual merits, the Council considers that in the light of the previous scheme immediately to the east of the site, the concerns that approval of this proposal could be used in support of other similar schemes is a realistic and specific concern.
- 6.65 The land to the rear of 301 Rayleigh Road was also included within the former Policy HO20 allocation, the same very special circumstances as being argued here also applied to that site in terms of poor housing land supply and the provision of 100% affordable housing. Allowing the current appeal would make it more difficult to resist further planning applications for similar developments, and the Council considers that the cumulative effect of such development would exacerbate the harm to the Green Belt as well as piecemeal development of small unrelated sites such as that previously proposed at the rear of No 301 Rayleigh Road or indeed, for any other small parcel within the former Policy HO20 allocation.

7 THE PLANNING BALANCE

- 7.1 The NPPF requires that substantial weight is given to any harm to the Green Belt and that ‘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
- 7.2 The Council accepts that it is not able to demonstrate a 5 year supply of housing and the policies which are most important for determining the appeal are also out of date (paragraph 11 d). In those cases, the tilted balance would normally apply. However, Footnote 7 applies in this case whereby there are clear reasons for refusing (what is agreed to be) inappropriate development in the Green Belt unless very special circumstances apply.
- 7.3 As has been set out above, the appeal scheme represents inappropriate development in the Green Belt and the Council attaches substantial weight to this in principle harm. The Council also attaches substantial weight to the additional harm to the openness of the Green Belt as required by NPPF Paragraph 148. These harms weigh against the development.
- 7.4 Balanced against that harm is the substantial benefit of providing 44 affordable dwellings to help meet the Borough’s housing need. However, the Council concludes that whilst the Appellant’s suggested very special circumstances may be considered to be benefits of the scheme and has attached appropriate weight to their provision, they do not amount to very special circumstances. Furthermore, that these and the other more limited benefits which are considered in Section 6 above do not clearly outweigh the substantial harm to the Green Belt. Consequently, the Council does not consider that very special circumstances exist which justify the inappropriate nature of the development and the harm that would arise.
- 7.5 As the development is inappropriate within the Green Belt and the Council has demonstrated that there are no very special circumstances to justify making an exception in this case, Green Belt policy as set out in paragraphs 133-147 of the Framework provides a clear reason for refusing the development. It follows therefore that the ‘tilted balance’ in paragraph 11 of the Framework does not apply in this case.

7.6 The Council therefore considers the appeal should fail and requests the Inspector to dismiss this appeal.