
**Town and Country Planning Act 1990
Planning and Compulsory Purchase Act 2004**

Section 78 Appeal by Redrow Homes Ltd

Land at Little Bushey Lane, Bushey

Planning Proof of Evidence

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Director at Barton Willmore now Stantec

Appeal Ref: **APP/D0121/W/21/3285624**

LPA Ref: 22/1071/OUT

April 2023

Town and Country Planning Act 1990 – Section 78

Planning and Compulsory Purchase Act 2004

**Town and Country Planning
(Inquiries Procedure) (England) Rules 2000 (As Amended)**

Land at Little Bushey Lane, Bushey

**Appeal against non-determination of planning permission by Hertsmere Borough Council of an outline planning application for residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works.
(Outline Application with Appearance, Landscaping, Layout and Scale Reserved)**

**Planning Proof of Evidence
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1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Kathryn Ventham. I hold a Bachelor of Science Degree (with Honours) in Human Geography from the University of Reading (1997) and a Masters Degree in City and Regional Planning from the University of Wales (Cardiff) (2000). I am a Chartered Member of the Royal Town Planning Institute.
- 1.2 Barton Willmore, now Stantec is one of the UK's leading planning and design consultancies. Barton Willmore was formed as an architectural practice in the 1930s, it developed into a comprehensive planning, architectural, landscape and urban design practice in the 1970s to 1990s and has strong track record in the design and implementation of major housing and mixed-use development. Barton Willmore become part of Stantec UK in April 2022.
- 1.3 I am currently a Planning Director, having been a Partner at the Birmingham Office of Barton Willmore since 2013. I joined the company as a Senior Planner in October 2003, having previously been employed as a Planning Consultant by the Derek Lovejoy Partnership (now part of Capita Symonds). I have also held positions at Chiltern District Council and Cherwell District Council. In total, I have over 22 years experience working in both the public and private sector.
- 1.4 I currently undertake a wide range of professional town planning consultancy work advising private developers, landowners and public sector clients on a wide range of planning issues. I have extensive experience of S78 Appeals dealt with via all methods. I have been involved with the promotion of the Appeal Site through the plan review and also the planning application forming the basis of this appeal.
- 1.5 The evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared, and is given in accordance, with the guidance of my professional institution and I confirm that the opinions expressed are my true professional opinions.

2.0 INTRODUCTION

2.1 This Statement is submitted on behalf of Redrow Homes Ltd (the 'Appellant') in support of an appeal against the non-determination of an outline planning application by Hertsmere Borough Council (HBC), for the proposed residential development of land at Little Bushey Lane, Bushey (the 'Appeal Site').

2.2 The description of development for the Appeal Scheme is as follows:

"Outline planning application for residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved)"

2.3 The application was submitted to the Council on 20th June 2022. The list of accompanying plans and documents is incorporated in the Core Documents list.

2.4 An appeal against non determination was lodged on the 6th January 2023. Officers then presented a report to the Council's Planning Committee on 23rd February 2023. At this meeting, three putative reasons for refusal were provided:

1. Per paragraph 11 of the NPPF, the presumption in favour of sustainable development applies. Planning permission should therefore be granted, unless the application of policies within the NPPF that protect areas or assets of particular importance (which includes land designated as Green Belt) provides a clear reason for refusal.

The proposed development is considered to be inappropriate development in the Green Belt, given that it would fail to comply with any of the defined exceptions at paragraphs 149 and 150 of the NPPF. A case for Very Special Circumstances (VSCs) has been made by the applicant, outlining a number of benefits of the scheme. However, these benefits when taken together are insufficient to clearly outweigh the

substantial harm to the Green Belt, by virtue of inappropriateness and due to the significant harm to openness that would arise.

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

2. The proposed development is considered to result in harm to the character and appearance of the landscape; in particular, due to the visual impact of the development on existing open views with rural aspect from Little Bushey Lane and nearby Public Rights of Way, including those that cross through the application site (PRoW Bushey 033 and 040). In particular, views through and within the site from PRoW 040 would become enclosed and constrained by built form.

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

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

2.5 This wording was re-affirmed in the Council's Statement of Case (**CD D2**).

2.6 Following the refusal of the outline planning application at Planning Committee on 23rd February 2023, updated Concept Masterplan and Parameter Plans were submitted to the

Planning Inspectorate and HBC on 28th February 2023 to address Reason for Refusal 3 (flood risk). These plans were also the subject of a 3 week public consultation period.

3.0 THE APPEAL PROPOSALS

Appeal Site Description

- 3.1 The red line area extends 18.2 hectares.
- 3.2 The Appeal Site itself is greenfield and comprised of grazing land. It is formed of multiple fields divided by hedgerows and fencing. The Appeal Site is located within the Green Belt.
- 3.3 The Appeal Site is irregular in shape, with hedgerows and trees located internally and along the site boundaries. A small brook is located along the eastern boundary of the Site, running in a north to south direction. There are two Public Rights of Way (PRoW) located within the Appeal Site. Public footpath / multi-use path 33 is located along the northern boundary of the Site at Hart's Farm, and public footpath / multi-use path 40 is located across the Site, providing rights of way in a west of east direction.
- 3.4 The Appeal Site is free from any formal ecological designations.
- 3.5 There are no heritage assets within or immediately adjoining the Appeal Site.

Design

- 3.6 Notwithstanding that detailed design matters are reserved, the design concept has developed from careful consideration of the location, local character and constraints and opportunities. The Design and Access Statement and subsequent addendum (**CD A5 and B5**) set out the design principles and evolution, outlining the design parameters and initial approach to the character of this residential development.
- 3.7 The Appeal submission is accompanied by a Indicative Masterplan (**CD D3**), Design and Access Statement (**CDA5 / B5**) and accompanying Parameter Plans (**CD D4 – D6**) set out the parameters for land use, densities and building heights.
- 3.8 As demonstrated on the Land Use Parameter Plan (**CD D4**), the Appeal Scheme comprises up to 310 dwellings; land is provided for a 1 Form Entry Primary School (with space for expansion to 2 Form Entry) and community facilities / mobility hub along with open space.
- 3.9 As demonstrated by the Storey Heights Plan (**CD D5**) the Appeal Scheme will predominantly comprise of 2 storey family housing, with up to 2.5 storey development along the western, eastern and northern (in part) boundaries of the Site, and along part of the primary access

road into the Appeal Site. The proposed mobility hub will be up to three storeys in height to allow for apartments on upper storeys.

Open Space

- 3.10 Approximately 7.79ha of green infrastructure / public open space is proposed to be disbursed throughout the Appeal Site. The proposal seeks to retain and enhance the existing green infrastructure on the Appeal Site.
- 3.11 It is proposed to set the development back at the Appeal Site entrance, including a 'village green' type area. Pockets of open space are disbursed throughout the development, with a large area of open space located within the eastern part of the Appeal Site. This will incorporate a LEAP and a LAP, as well as footpaths, planting and drainage features. A variety of landscape typologies are proposed throughout the development.

Access

- 3.12 The proposed vehicle access point into the Appeal Site is from Little Bushey Lane. An Access Drawing is provided at **CD B21**. Means of access from Little Bushey Lane is included for consideration as part of this Appeal.
- 3.13 The existing Public Rights of Way on the Appeal Site will be retained in their current alignment where possible and enhanced to improve pedestrian connectivity and accessibility. A series of pedestrian footpaths have been set out within the design which provide a set of walking / recreational routes which build upon the existing network.

Car and Cycle Parking

- 3.14 Car parking and cycle spaces will be provided but are not for approval at this stage.

Affordable Housing

- 3.15 It is proposed that 40% of the open market housing will be provided as affordable properties. The provision of affordable housing will assist in meeting local needs and exceeds the Core Strategy Policy CS4 requirement of 35%.

Self-Build / Custom Build Dwellings

- 3.16 It is proposed that 5% of the open market homes provided on the Site will be self-build / custom build.

Flood Risk and Drainage

- 3.17 The majority of the Appeal Site is located within Flood Zone 1. Part of the site to the southeast is located within Flood Zones 2 and 3. This has been addressed through the

design of the development by containing built development to the areas located in Flood Zone 1.

- 3.18 The preliminary drainage strategy details the proposed SuDS measures.

Pylons and Pipelines

- 3.19 There are existing overhead electricity pylon which runs across the Appeal Site. The Appeal Proposal allows for a development offset of 30 meters either side from the pylons. This safety offset ensures that built development is an appropriate distance from the pylons and allows for any swing, sway or sag from the wires.
- 3.20 The Appeal Site also includes a foul sewer and a gas pipeline. Appropriate easements have been included within the Appeal Proposal.

Site Context

- 3.21 The Appeal Site is located on the eastern edge of Bushey, which merges into Bushey Heath further south, within the administrative boundary of Hertsmere Borough Council.
- 3.22 The northern boundary of the Appeal Site is bordered by Harts Farm and its respective land. Beyond this lies the 'Land at Rossway Industrial Estate' development for 82 residential dwellings (planning application reference: 14/0727/FUL, and the 'Land East of Rossway Drive development for 55 residential dwellings (planning application reference: 17/2081/FUL). The M1 is just beyond the north-east boundary. An extensive area of land to the east, located off Hillfield Lane South is used for the storage of vehicles, spoil and other material. Planning permission has also been approved for the erection of a new equestrian centre (planning application reference: 18/2410/FUL), and beyond that for the demolition of existing equestrian facility and redevelopment of the site to provide 5no. four bedroom dwellings and 4no. three bedroom apartments (planning application reference: 16/0160/FUL). To the immediate south and west is existing residential development.
- 3.23 Bushey is identified in the Core Strategy (CS) (adopted January 2013)(**CD F1**) as one of four 'main settlements', where priority will be given to locating the majority of residential development. The Settlement Hierarchy within the Core Strategy states that Bushey is "*predominantly residential in character covering three district centres (Bushey Heath, Bushey Village and North Bushey) with bus and nearby rail links to Watford and London, significant pockets of industrial land and a wide variety of local shops and services.*"

- 3.24 The established areas of Bushey and Bushey Heath are well served by public transport and access to the strategic road network (A41, M1 and M25). The site is located conveniently between Junctions 4 and 5 of the M1, providing strategic links to the north and south. Watford is 4 miles north-west and Bushey Railway Station approximately 2.5 miles to the west. Bushey Railway Station provides direct links to London Euston and Watford Junction stations.
- 3.25 In my opinion, for reasons which I will go on to explain in my evidence, the Appeal Site is in a suitable and sustainable location.

4.0 THE APPEAL CASE

Main Issues / Evidence Structure

- 4.1 Following the Case Management Conference (CMC) on the 2nd March 2023, the following matters were confirmed by the Inspector as the likely main issues:
- a) The effect of the proposed development on the purposes and openness of the Green Belt;
 - b) The effect of the proposed development on the character and appearance of the area;
 - c) The effect of the proposed development on flood risk; and
 - d) Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development.
- 4.2 My evidence is concerned with the final main issue and I review the compliance of the Appeal Scheme with the Development Plan and the planning balance. My evidence is to be read alongside the evidence of the following witnesses:
- Mr. Patrick Clark (Barton Willmore, now Stantec) who addresses landscape matters and matters relating to the purposes and openness of the Green Belt;
 - Mr. Colin Whittingham (RSK) who addresses flood risk and drainage matters;
 - Mr. James Stacey (Tetlow King) who addresses affordable housing matters; and
 - Mr. Andy Moger (Tetlow Wing) who addresses self build / custom build matters.
- 4.3 In addition, and appended to my evidence at **Appendix 1**, I include evidence from my colleague Mr Patterson-Neild in relation to housing land supply.
- 4.4 Taking into consideration, the identified main issues, my evidence is structured as follows:
- Development Plan (Section 5);
 - Other Material Considerations (Section 6);
 - Planning Obligations and Conditions (Section 7);
 - Third Party Submissions (Section 8);
 - Planning Balance (Section 9);
 - Summary and Conclusion (Section 10).

5.0 THE DEVELOPMENT PLAN

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the Act") states that:

"If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

5.2 It is agreed at paragraph 5.2 of the signed SoCG (**CD D8**) that the Development Plan, insofar as it relates to this assessment of the Appeal Scheme, comprises:

- Hertsmere Core Strategy (January 2013);
- Hertsmere Site Allocations and Development Management Policies Plan (November 2016).

Core Strategy (January 2013) (CD F1)

5.3 The reasons for refusal allege a breach of the following Core Strategy (CS) policies:

- Policy SP1: Creating Sustainable Development
- Policy SP2: Presumption in favour of Sustainable Development
- Policy CS12: The Enhancement of the Natural Environment
- Policy CS13: The Green Belt
- Policy CS16: The Environmental Impact of Development

5.4 In addition to the abovementioned policies, the Council's Statement of Case (**CD D2**) at paragraph 3.4 lists Policies CS1 (The Supply of New Homes); CS2 (The location of new homes); CS3 (Housing delivery and infrastructure), CS4 (Affordable Housing) and CS17 (Energy and CO₂) reductions as being of most relevance to the appeal. It is also acknowledged at paragraph 4.2 of the Council's Statement of Case that the "policies relevant for the determination of the application are out date". I have taken this to mean all relevant policies, including the most important policies (with regard to paragraph 11d of the NPPF). I will review the aforementioned relevant policies within this section.

5.5 The CS (**CD F1**) was adopted in January 2013 and covers the period 2012-27. As confirmed at paragraph 1.9 of the CS, the CS was submitted and examined under the East of England Plan (i.e. the Regional Plan), which was subsequently revoked on the 3rd January 2013. Paragraph 1.10 of the CS confirms that the CS sets out to deliver a level of growth in conformity with the now revoked East of England Plan.

- 5.6 As identified in the Spatial Vision in paragraph 2.1 the Borough is characterised by a small number of main settlements, including Bushey which the Appeal Site immediately adjoins. A significant proportion of the Borough is Green Belt land:

"Hertsmere is a largely rural Borough in Hertfordshire, and situated immediately to the north of London. 80% of the 38 square mile Borough is Green Belt land, with the four main settlements of Borehamwood, Bushey, Potters Bar and Radlett constituting the only urbanised areas..."

- 5.7 The Spatial Vision statement in Table 3 confirms the need to ensure sufficient land is made available to meet housing needs and that the four key settlements will remain a priority in realising this objective:

"...Steps will be taken to ensure that sufficient land is made available to meet the different housing needs of the local population and for a range of business accommodation and local services, facilitating a more sustainable pattern of development. Recognising the distinct development needs and local constraints of the four key settlements of Borehamwood, Potters Bar, Bushey and Radlett together with those of other communities, will remain a priority."

- 5.8 Paragraph 2.33 confirms that Borehamwood, Potters Bar and Bushey have been identified as Strategic Housing Locations, corresponding with their position within the Borough settlement hierarchy in Table 6 (The Settlement Hierarchy) of the Core Strategy.
- 5.9 Policy SP1 (Creating Sustainable Development) is a criteria based policy which seeks to create sustainable development. The Council's Statement of Case alleges a breach of criteria (v) and (vii) as detailed below:

The Council will work with Hertfordshire County Council, Hertfordshire Constabulary, NHS Hertfordshire, Registered Housing Providers and other key local stakeholders to enable development in the Borough to make a sustainable contribution to delivering the Core Strategy Spatial Vision and Strategy. Accordingly new development will be required to prioritise the efficient use of brownfield land in delivering the land use requirements of the private sector, local service providers and the different needs of the hierarchy of settlements across the Borough. There will be a focus on prioritising development opportunities in Borehamwood but all existing built up areas within urban settlements will be

expected to accommodate opportunities which arise for meeting local housing, jobs growth and other development and service needs. All development across the Borough should...

- (v) avoid prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment;**
- (vii) avoid inappropriate development in the Green Belt;**

5.10 I accept that there is conflict with criteria (vii) and by definition that there is harm to the Green Belt which attracts substantial weight in the planning balance.

5.11 The evidence of Mr. Clark addresses the character of the area and concludes that whilst there would be a notable change to the existing open character of the Appeal Site, when considered at the level of the Appeal Site vicinity, accounting for the context to the Appeal Site, this would not be out of keeping and would be readily integrated.

5.12 Policy SP1 is a framework to deliver a Core Strategy Vision, which as far as housing growth is concerned, is out of date. The Council's position in respect of all relevant policies being out of date is confirmed in paragraph 4.2 of their Statement of Case. The Council have failed to review their plan in a timely manner and as a consequence there is a severe and systemic failure to deliver sufficient market and affordable housing as evidenced by the Council's inability to demonstrate a 5 year supply of housing land and the evidence of Mr Stacey on affordable housing need. I therefore attribute only limited weight to any alleged conflict with criteria (v) in this regard.

5.13 Policy SP2 - Presumption in favour of Sustainable Development states:

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly, in particular through the preapplication process, to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in this Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the

Council will grant permission unless material considerations indicate otherwise - taking into account whether:

a) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or

b) specific policies in that Framework indicate that development should be restricted.

- 5.14 I do not consider Policy SP2 is one which is, or can be, breached. It is an instruction or a mechanism as to how the presumption will operate within the plan. It is not a policy with which a scheme can comply or not as it simply tells the reader how the presumption will operate. As such, I do not consider there to be any conflict with this policy.
- 5.15 Paragraph (b) of Policy SP2 effectively brings the balance required by paragraph 148 of the NPPF into the Development Plan; thus passing the paragraph 148 balance is, in effect, the unitary test for compliance with the Development Plan and the NPPF.
- 5.16 Paragraph 3.2 sets out the drivers behind the need for additional housing development, which include household growth (driven by smaller households, higher life expectancy, and increased separation rates); population increase; and housebuilding rates which are not keeping up with the projected level of affordable housing need. To 2027, the Council expected to accommodate up to 25% of new homes in Bushey (second only to Borehamwood (60%).
- 5.17 Policy CS1 (The Supply of New Homes) requires provision of 3,990 dwellings between 2012 and 2027 (based on a new revoked RSS) having regard to a series of criteria, including environmental constraints, character, pattern and density of the surrounding area, the need to locate new development in the most accessible locations taking account of infrastructure capacity, the settlement hierarchy and the need to focus development within the boundaries of existing built-up areas.
- 5.18 It is of importance to appreciate that the Core Strategy Inspector (paragraph 15) (**CD F20**) concluded that the proposed housing target of 3,550 (amended through main modifications to 3,990) had “not been adequately justified against the RS [Regional Strategy],” and that:

“The under-provision proposed in the Plan is not supported by substantive evidence that this is justified, having regard to the overall planning objectives for this part of the region set out in RS Policy LA1.”

- 5.19 The Core Strategy Inspector ultimately concluded that there were insufficient grounds to delay the Plan in order to re-assess the housing requirement at that time, but concluded the need for an early partial review of the Plan within 3 years (i.e. by January 2016) in paragraph 23 that:

"The Council has put forward modifications that firstly, set the RS residual housing requirement as the minimum provision figure for the Plan and secondly, confirm that the necessary re-assessment of housing need and demand will be undertaken in collaboration with adjoining authorities to inform an early partial review of the Plan. This will include an updated strategic housing market assessment and jobs growth and employment land study."

- 5.20 The commitment to a partial review is detailed in paragraph's 9.13-9.15 of the CS (**CD F1**):

"The Council commits to undertaking a partial review of the Core Strategy within three years of the adoption of this Development Plan Document..."

"The Council acknowledges that housing need in the authority would not be fully met in the minimum target set in Policy CS1, based on the latest available evidence."

- 5.21 It is clear from the comments of the Inspector and the wording of CS paragraph's 9.13-9.15 that an early Partial Review of the Plan was required. There is no evidence that this was ever undertaken by HBC. It is therefore evident that the current housing target is not based upon an NPPF compliant assessment of local housing need, and that the current CS1 position (and thus the strategy which flows from this) was taken forward on the basis that a partial review would have been completed by the end of 2016 and a revised policy adopted. Over 6 years have passed since this should have been completed and the housing target set out in Core Strategy Policy CS1 (and the policies which flow from this) must therefore be treated as out of date. The Council's Statement of Case confirms both parties are in agreement in this regard.
- 5.22 Policy CS2 (The Location of New Homes) states that priority will be given to locating the majority of residential development in the main settlements with 25% in Bushey. Windfall developments will be supported on appropriate sites in all towns subject to environmental constraints, the relationship with the surrounding pattern of development and the requirements of other policies. Again, this location strategy flows from Policy CS1 and must therefore be treated as out of date.

- 5.23 Paragraph 3.16 confirms that where housing delivery and projected housing completions fall below the minimum rate, in line with Policy CS3 and the contingency arrangements set out in Chapter 9 (Implementation and Monitoring Framework), it will be necessary to take steps to increase the housing supply.
- 5.24 I therefore attach only limited weight to Policies CS1 and CS2; and thus only limited weight to any breach.
- 5.25 Policy CS3 (Housing Delivery and Infrastructure) states that:

"Where housing delivery has fallen below the required minimum rate over a rolling three year period by at least 20% and at the same point in time the expected completions over the following five years will be insufficient to compensate for the shortfall of the minimum required annualised rate, a review of housing allocations will be undertaken including consideration of safeguarded land for housing and land presently designated as Green Belt. New housing development will only be permitted if satisfactory arrangements are in place to provide the necessary infrastructure."

- 5.26 Despite a shortfall in supply and the need for a review to have been completed by 2016; no review of the need for housing or the Green Belt boundaries has been completed.
- 5.27 At the time of adoption of the Core Strategy no changes were proposed to the Green Belt save for at Shenley Hospital, which is not relevant to the Appeal Site.
- 5.28 However, Paragraph 9.7 (Implementation & Monitoring Framework) confirms that:

"Should housing delivery still remain more than 20% below the annualised housing target, as set out above, this will trigger a review of the plan and the Council will implement one or more of the following measures in order to increase the delivery of housing, as detailed below:

- 1. Review the DPDs to bring forward additional sites for housing in locations consistent with the overarching spatial strategy, including a review of housing allocations, affordable housing provision and S106/CIL requirements.**
- 2. In the event that there is still a shortfall in housing delivery, following co-operation with neighbouring authorities, the Council will evaluate employment land and if**

required Green Belt land with the aim of releasing land for housing development in appropriate locations.”

- 5.29 The above steps have yet to take place.
- 5.30 The reasoned justification to Policy CS3 also advises (at paragraph 3.19) that the availability of affordable homes is a key issue in the Borough and that as such, addressing affordable housing need is “a key Core Strategy objective”. The SHMA produced as part of the evidence for the plan review identified at that time that 89% of new housing to 2021 should be affordable to meet projected demand. Evidence produced at that time from the National Housing Federation indicated that Hertsmere was the least affordable local authority area out of 48 local authority areas.¹ The updated position in this regard is covered in the evidence of Mr Stacey; and I review this further in Section 6 of my evidence.
- 5.31 Policy CS4 (Affordable Housing) sets out to increase the supply of affordable housing on qualifying sites. The percentage provision is dependent upon postcode area – for the Appeal Scheme, the Policy seeks at least 35% provision. The policy also states that the Council will seek the maximum level of Affordable Housing on site. The evidence of Mr Stacey deals with this matter in detail and refer to his evidence. However the Appeal Scheme provides 40% affordable housing which exceeds the minimum 35% provision.
- 5.32 Policy CS12 The Enhancement of the Natural Environment forms part of the reason for refusal and states that:

All development proposals must conserve and enhance the natural environment of the Borough, including biodiversity, habitats, protected trees, landscape character, and sites of ecological and geological value, in order to maintain and improve environmental quality, and contribute to the objectives of the adopted Greenways Strategy and the Hertsmere Green Infrastructure Plan. Proposals should provide opportunities for habitat creation and enhancement throughout the life of a development. In the case of the highest quality agricultural land (Grades 1, 2 and 3a) and Preferred Areas of mineral extraction, proposals will only be permitted where there is no likelihood of the land being sterilised for future agriculture or mineral extraction.

- 5.33 I adopt the conclusions of Mr Clark’s evidence in this regard. I note that Reason for Refusal 2 as set out in the Decision Notice, is concerned with landscape and visual matters with

¹ The National Housing Federation – Home Truths 2010: East of England.

specific reference to alleged harm to landscape character. Therefore in the assessment of this policy, it is assumed that the alleged breach relates to landscape character only.

- 5.34 As set out in the evidence of Mr Clark (who's conclusions I adopt); the proposed scheme will not cause significant harm to landscape character. Whilst there is inherently harm which arises from the development of a greenfield site, the conclusion of Mr Clark is that this harm would be very limited and localised.
- 5.35 The appeal scheme also proposes a significant area of open space (as agreed in the SoCG paragraph 6.40 – **CD D8**) and the proposals include for habitat creation through the delivery of bio-diversity net gain (20.33% habitat units; 39.42% hedgerow units and 12.41% river habitats). The policy objective therefore of enhancement of the natural environment is achieved when one considers the weighing of limited landscape character harm (mindful landscape character is not one of the 5 purposes of the Green Belt) against significant open space provision and a net gain in bio-diversity. Again, the Council's position in their Statement of Case is that this policy is out of date (and I agree) and I attach limited weight to any alleged breach.

- 5.36 Policy CS13 deals with the Green Belt and states that:

There is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist. Development proposals, including those involving previously developed land and buildings, in the Green Belt will be assessed in relation to the NPPF.

Limited infilling within the village envelopes of those parts of Elstree, Shenley and South Mimms which are in the Green Belt will be considered appropriate, provided that it is sympathetic to its surroundings, retains and protects features essential to the character and appearance of the village and complies with other relevant policies in this Plan. Village envelopes for Elstree, Shenley and South Mimms for limited infilling will be identified through the Site Allocations DPD.

Key Green Belt Sites (previously known as Major Developed Sites) contain established educational, research and other institutions within the Green Belt and are suitable locations for appropriate infilling: Development within defined boundaries for infilling will be considered acceptable and these boundaries will be reviewed through the Site Allocations DPD.

The Green Belt boundary will remain unchanged from that shown in the Hertsmere Local Plan (2003) except where the boundary will be redrawn in the Site Allocations DPD around Shenley to reflect the recent development of Shenley Hospital and at Borehamwood, to the east of Rowley Lane, where it will be redrawn to reflect the removal of land for safeguarding for employment development.

5.37 Policy CS13 contains the general presumption against inappropriate development in the Green Belt. However within the Policy is the ability for benefits to outweigh harms and therefore for very special circumstances to be demonstrated although the wording differs from the NPPF. Thus in the event that, as I set out in my evidence, the benefits are agreed to outweigh the harms then very special circumstances are deemed to have been demonstrated and the Appeal Scheme would then be in accordance with this policy. The Council's Statement of Case confirms their position being that this policy is out of date and I concur.

5.38 The Green Belt boundaries in Hertsmere were not subject to a comprehensive review when producing the Core Strategy as confirmed in Policy CS13. Whilst the evidence base supporting the 2003 plan is not available on the Council's web-site; paragraph 4.1 of that Plan² advises that the Draft Plan was published in 1996. It is therefore logical to assume that the evidence base supporting previous minor revisions to the Green Belt was produced prior to 1996 which is some 27 years ago. The Green Belt boundaries are fixed in accordance with a strategy aimed at meeting a level of housing growth which is now out of date. The boundaries of the built up areas and thus the Green Belt, must also be considered out of date, thus only limited weight should be attached to any breach insofar as it relates to development beyond built up areas.

5.39 Policy CS16 Environmental Impact of Development states

The Council will work with key partners, including the Environment Agency and Natural England, to ensure that development proposals do not create an unacceptable level of risk to occupiers of a site, the local community and the wider environment. Development proposals should take account of the policy recommendations of the Councils SFRA and the guidance set out in the jointly produced guidance of the Hertfordshire Planning Authorities 'Building Futures' the Hertfordshire Guide to Promoting Sustainability in Development. Proposals will be required to incorporate sustainability principles, minimising their impact on the

² Hertsmere Local Plan 2003 - [Hertsmere Local Plan 2003 \(SUPERCEDED - for information only\)](#)

environment and ensuring prudent use of natural resources by measures including:

- i) avoiding development in the floodplain and close to river corridors unless the requirements of the sequential and exceptions tests have been met and flood prevention/mitigation measures are in place as required by the Environment Agency;**
- ii) improving water efficiency by reducing water consumption through measures such as water saving devices in line with the Code for Sustainable Homes and BREEAM as a minimum requirement;**
- iii) incorporating the use of Sustainable Urban Drainage Systems (SUDS) where appropriate and where required by the Flood and Water Management Act 2010 to help reduce the risk of flooding;**
- iv) ensuring that pollutants are minimised (including emissions to air, water, soil, light and noise);**
- v) remediating land affected by instability and contamination, and maintaining appropriate distance from establishments containing hazardous substances;**
- vi) ensuring efficient use is made of natural resources through their layout, design and construction, including locally sourced materials where possible in line with the requirements of BREEAM on sustainable design;**
- vii) achieving reduced levels of energy consumption and the use of energy from renewable resources;**
- viii) making provision for waste minimisation and recycling within the development during the construction phase and following occupation; and**
- ix) development proposals must demonstrate that they accord with Policy CS12 and that any adverse effects can be overcome by appropriate alleviation and mitigation, which are capable of being secured through planning conditions or an obligation in accordance with Policy CS21.**

5.40 The substance of Policy CS16 is addressed in the evidence of Mr. Whittingham who considers the Flood Risk Assessment and preliminary drainage strategy provides an appropriate level of response for an outline planning application. It is not clear which aspects of the Policy the Council considers are breached however reference is made to criterion (iii) – incorporating the use of SUDS where appropriate to help reduce the risk of flooding; and (ix) – demonstrating that proposals accord with CS12 and that any adverse effects can be overcome by appropriate alleviation and mitigation which are capable of being secured via planning condition or obligation. It is noted that the policy cites both the Environment Agency and Natural England as key partners in this respect. Neither of them raise any objection to the Appeal Scheme. The policy advises that development proposals should take account of the latest Strategic Flood Risk Assessment. In this case, the most

recent SFRA is dated May 2018 (**CD G16**) and was used as part of the evidence base to support the proposed allocation of the site for mixed use development.

- 5.41 The drainage strategy is based upon the use of SuDS and the features will offer multi-functional benefits (attenuation, water quality improvements, bio-diversity and amenity benefits. Preliminary drainage strategy drawings and calculations were included within the submitted FRA.
- 5.42 Within the draft list of conditions in circulation and also in the response to the LLFA in March 2023 (**CD D7**); the Appellant proposed 2 conditions which are considered addresses this matter in full mindful that the policy advocates the use of conditions to deliver mitigation.
- 5.43 It is my view and the view of Mr Whittingham that there is no conflict with Policy CS16.
- 5.44 CS17 – Energy and CO2 Reductions - the Council cite CS17 as a policy of relevance albeit there is no breach of this policy. The Council use their Climate Change Interim Planning Position Statement (CCIPS) (**CD F9**) alongside Policy CS17. The CCIPS has not been the subject of any consultation and therefore has very limited weight in the determination of this appeal at best, however the Appellant submitted a Climate Change and Energy Statement (CD A19) with the application which specifically addresses Policies CS16 and CS17 along with the CCIPS. This specifically demonstrated how relevant and up to date policy objectives are met and exceeded. The Appellants have previous confirmed their acceptance of a planning condition in this regard.

Hertsmere Site Allocations and Development Management Policies Plan (November 2016) (CD F2)

- 5.45 The Site Allocations and Development Management (SADM) Policies Plan was adopted on the 23rd November 2016 with the aim of supplementing and delivering the strategy / spatial vision set out in the Hertsmere Core Strategy 2013. Paragraph 20 of the Inspector's Report (IR) (**CD F21**) of the SADM notes that post 2021, the trajectory shows a "marked falling away" to below the annual average of the CS requirement [this requirement being a requirement based on an abolished Regional Spatial Strategy]. The Inspector notes that should this trajectory play out, then there would be implications for the maintenance of a continued five year supply of housing land during the period 2021 – 2027, which as set out in the housing land supply evidence appended to my evidence (**Appendix 1**), is exactly what has transpired. The Council therefore had ample prior warning and have simply failed

to progress a plan led approach to rectifying this. This is the context therefore in which the policies in the Development Plan should be read.

5.46 At the time of the Inspector writing her report, it was noted that the partial review of the plan was underway and was expected to be adopted in 2018; and that the review would include a revised OAN for the Borough (reasonably assumed to be higher than the adopted CS figure). This has not materialised.

5.47 The Council have cited 4 SADM policies within the reasons for refusal as detailed below:

5.48 Policy SADM11 - Landscape Character which states:

Development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the borough. Individual proposals will be assessed for their impact on landscape features to ensure that they conserve or improve the prevailing landscape quality, character and condition, including as described in the Hertfordshire Landscape Character Assessments. The location and design of development and its landscaping will respect local features and take opportunities to enhance habitats and green infrastructure links. Landscaping schemes should use native species which are appropriate to the area.

5.49 I draw on the evidence of Mr Clark, who concludes that reflecting what is set out in the LVIA (**CD A15**) and detailed in LVIA Appendix A3, there would be very limited and localised effects on landscape character as a result of the Proposed Development. The effects would be localised owing to the degree of containment by topography, infrastructure vegetation and built form such that the character influence of the Proposed Development would not be perceptible beyond the Appeal Site vicinity which is contained to the west of the M1/A41 road corridors.

5.50 Effects would be limited by a number of factors as identified below:

1. The Proposed Development would be set within a context heavily influenced, disrupted and fragmented by existing built development and infrastructure, as recognised by published character assessment and Green Belt appraisal at a detailed local level, including the 'semi-urban character' and the influence of existing 'stark' built edges.
2. The landscape condition of the Appeal Site vicinity has deteriorated through vegetation loss and grazing and published guidance sets out the potential for restoration and enhancement of landscape character.

3. The design of the Proposed Development responds to topography, vegetation patterns and settlement pattern to be readily integrated into the existing settlement edge; as well as retaining views to the wider landscape, notably to existing distinctive features.
 4. The structural landscape proposals would further integrate the Proposed Development in this setting and which would restore landscape features and notably enhance the legibility, visual interest and structural diversity of the Bushey Heath Drain stream corridor.
 5. Therefore, whilst there would be a notable change to the existing open character of the Appeal Site, when considered at the level of the Appeal Site vicinity, accounting for the context to the Appeal Site, this would not be out of keeping and would be readily integrated.
- 5.51 Mr Clark concludes that, reflecting the LVIA, there would be adverse effects on the Appeal Site vicinity of moderate significance at year 1, reducing to minor significance at year 15, which accounts for the beneficial changes in character arising from the enhanced access to and quality of open space in the eastern area of the Appeal Site.
- 5.52 In relation to published character assessments for the wider LCAs 22 and 23, reflecting the LVIA, he considers that there would be adverse effects of minor-negligible significance at year 1, reducing to neutral effects by year 15, accounting for the balance of beneficial changes in the landscape, notably in terms of enhancing the 'stark' residential edges identified in the published assessments. Further beneficial changes would result from a positive response to published guidance, notably through creation of new woodland at the edge of Bushey, restoring and expanding existing field boundary vegetation, new pond creation and improved grassland management.
- 5.53 Mr Clark concludes that there will be limited and only localised harm to character and that the prevailing landscape quality and character will be retained. The proposal provides a significant amount of open space and the green infrastructure is a key component of the scheme. I adopt the conclusions of Mr Clark and conclude that whilst there is some harm – given the limited and localised nature, I attach only limited weight to any breach of Policy SADM11.
- 5.54 Policy SADM14 - Flood Risk states that the risk of flooding will be avoided and reduced by:
- (i) locating development within areas of lower flood risk through the application of the sequential test and then applying an exception test in line with the National Planning Policy Framework (NPPF); and**

(ii) ensuring that development proposals in flood risk areas actively manage and reduce flood risk by applying the sequential approach at site level.

Where new development is proposed in a flood risk area, a site specific Flood Risk Assessment will be required. This must take into account the risk associated with all types of flooding. Development must satisfy the following principles:

- (i) It must not increase the risk of flooding elsewhere.**
- (ii) Within sites at risk of flooding, the most vulnerable parts of the proposed development should be located in areas of lowest flood risk, unless there are overriding reasons to prefer different locations.**
- (iii) Floor levels of development in Flood Zones 2 and 3 should be situated above the 1% (1 in 100 years) plus climate change predicted maximum water level, plus a minimum watertight depth of 300mm above the normal water level.**
- (iv) Development at risk from any form of flooding should be flood resilient and resistant, with safe access and escape routes: it should also be demonstrated that residual risks can be safely managed.**
- (v) Development should incorporate appropriate flood resilient features and flood mitigation measures.**
- (vi) Where possible the footprint of existing buildings should be reduced.**
- (vii) Any necessary flood protection or mitigation measure should not have an undue impact on nature conservation, landscape character, recreation or other important matter.**
- (viii) There should be no net loss in flood storage on site.**
- (ix) Flood flow routes should be preserved.**
- (x) Where possible, flood storage should be maximised through the use of green infrastructure and sustainable drainage systems.**
- (xi) The risk from all types of flooding should be reduced as a consequence of development, wherever possible. Where necessary, planning permission will be conditional upon flood protection and/or runoff control measures being operative before other site works.**

5.55 The Council have not cited where the alleged breach(es) of this policy lie. The FRA demonstrates that the most vulnerable parts of the development have been directed to the lowest risk parts of the site and that the development will be safe (including resilience/mitigation measures within the properties where required and providing safe access routes) without increasing flood risk elsewhere. Flow routes through the site are

maintained and an overall reduction in flood risk is demonstrated through the surface water flood risk modelling and through the reduction of surface water runoff rates from the development area through the use of SuDS.

5.56 I highlight that Policy SADM14 allows for the use of a planning condition(s) which is the approach proposed by the Appellant, having, in the Appellants view, provided a level of detail which is more than sufficient to support an outline planning application and proposed detailed planning conditions to secure the requisite level of detail at the design stage. Mr Whittingham concludes, and I adopt his conclusions, that there is no breach of Policy SADM14.

5.57 Policy SADM15 - Sustainable Drainage Systems states that:

The design of new development should include sustainable drainage measures. In particular, the Council will require the introduction of sustainable drainage (SuDS) on all major developments (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 and any subsequent order). The drainage scheme should provide the most sustainable option from the SuDS hierarchy. Measures should attenuate water runoff at source (e.g. through attenuation ponds, filter strips, swales) and achieve multiple benefits (including management of flood risk and surface water pollution, amenity and biodiversity). The drainage scheme will:

- (i) achieve the green field runoff rate, or as close to it as practicable;**
- (ii) provide a 1 in 100 year attenuation taking into account climate change;**
- (iii) provide arrangements for future maintenance and management.**

5.58 With regard to Policy SADM15, a drainage strategy based on the use of SuDS is proposed. The drainage hierarchy has been followed. Greenfield runoff rates have been achieved; attenuation is provided for the 1 in 100 year plus climate change event and a draft SuDS Management Plan is provided.

5.59 Mr Whittingham concludes that there is no breach of either SADM14 or SADM15 and I draw on his evidence and concur with his view.

5.60 Turning to back Green Belt matters, the Council cite Policy SADM 26. The Council's Statement of Case appears to consider the breach to be in respect of criteria (iv) only (in relation to the scale, height and bulk of development being compatible with the landscape

setting and not being harmful to the Green Belt) being used in Reason for Refusal 1 which is concerned with harm to openness.

The Council will assess all applications for development in the Green Belt, as defined on the Policies Map, in accordance with Core Strategy Policy CS13 and to ensure they comply with the following principles...

(iv) the scale, height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt;

- 5.61 I draw on the evidence of Mr Clark who concludes that whilst there would be some harm to openness within the Appeal Site, which I discuss further in Section 9 of my evidence, this harm would be limited and localised. I nonetheless attach substantial weight to this in my planning balance.

Compliance with the Development Plan

- 5.62 Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the Act") states that:

"If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise".

- 5.63 In assessing compliance with the Development Plan, I take account of the case of *Cornwall Council v Corbett* [2020] EWC Civ 508 (**CD J4**) and the Court of Appeal findings which confirmed the Council's approach of identifying a policy conflict (in that case a conflict in respect of the harm to an Area of Great Landscape Value) but concluding that there was compliance with the Development Plan as a whole. The Court of Appeal noted that Local Plan policies can pull in different directions and that the weight to be given to policies and to determine compliance with the Development Plan as a whole, is a matter of planning judgement. It is my view, that this clearly confirms that the compliance with the Development Plan does not mean compliance with every policy therein, and that a failure to comply with the Development Plan does not automatically mean that the proposals are not in accordance with the Development Plan.
- 5.64 I conclude within this Section of my evidence that the proposals are in accordance with the Development Plan taken as a whole.

- 5.65 In particular, through Policy SP2, the presumption is built in the Development Plan i.e. the Development Plan anticipates and facilitates a position where it may be necessary to undertake a planning balance in order to meet plan objectives. Sub-paragraph (b) refers to *"specific policies in that Framework indicate that development should be restricted"*. Those policies include the policy balance required through paragraph 148 of the NPPF (i.e. that the substantial weight given to harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations). Thus in the event that the Inspector agrees with my conclusions (which I explain below) in respect of the paragraph 148 balance then the proposal will also accord with the Development Plan.
- 5.66 In dealing with circumstances where there is an alleged breach of the Development Plan, as the Council allege here, it is important to assess whether or not the policies in question are up to date and the weight to be attached to them. There are two circumstances when policies can be found out of date. The first is that the policy is out of date as it has been overtaken by things which have taken place since the plan was adopted. In this regard, in 2020, the Court of Appeal (**CD J7**) held that the analysis of the meaning of 'out of date' in the former NPPF 2012 by Lindblom (**CD J6**) applied in the same way to the 2020 NPPF in that policies are out-of-date (for purposes other than those that relate to Footnote 8 of para 11(d) of the NPPF) if they have been: ***"...overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date"***.
- 5.67 With regard to this appeal, the current housing requirement as set out in the CS does not address current housing need. The Core Strategy policies are prepared to be in conformity with the East of England Regional Plan (**CD F19**) which itself pre-dates the NPPF and is now abolished. The East of England Plan itself was intended to be reviewed and it was based on population projections from 2006 and a national housing target of only 240,000 new homes per annum (paragraph 5.1) and therefore the housing figure contained within that Plan (508,000 between 2001 and 2021) was set as minimum figure because the figure of 508,000 dwellings fell significantly short of what is needed based on evidence about housing pressure, affordability and household projections. The review policy (Policy IMP3) was to bring forward proposals for higher growth during the period 2011 to 2021, as well as setting requirements to 2031.
- 5.68 With regard to the Green Belt boundaries, it is noted that these have not been the subject of a strategic and comprehensive strategic review since inception. This is confirmed in the Stage 1 Green Belt Study 2017 (**CD G7**) where it is stated in Section 2 (page 2) that:

[...] in 1974, the Borough of Hertsmere was established, encompassing Bushey Urban District, Potters Bar Urban District, Elstree Rural District and parts of the Watford Rural District (Aldenham). The Borough inherited the defined Green Belt boundaries, which have remained largely unaltered since."

- 5.69 There is already a tacit acknowledgement built into the Core Strategy that the extent of the built up area boundaries are out of date as the Green Belt boundaries are tightly drawn (paragraph 4.74 – SADM **CD F2**) reflecting a housing need which was already not meeting the correct level of need at the time of adoption; the GB boundaries were rolled forward from the 2003 Plan (and as confirmed above, have been largely unaltered since inception), with the exception of two specific named locations, and therefore reflect a housing need which was predicated on a now abolished Regional Spatial Strategy and which was to have been reviewed to provide an up to date position by 2016 (some 7 years ago). The work which underpins the current Local Plan review, and which is agreed to be a material consideration for this appeals, shows a significant uplift in housing provision.
- 5.70 Furthermore, paragraph 4.2 of the Council's Statement of Case acknowledges that the policies "relevant to the application", which will include built up area boundaries and Green Belt boundaries, are out of date.
- 5.71 Policies CS1 and CS2 address the supply of new homes and the location of new homes. Both are therefore based upon an out of date housing target; and Green Belt and built up area boundaries which restrict the ability to meet current need.
- 5.72 Policy CS2 is a policy which seek to restrict development to that "within the main settlements" (of which Bushey is one). Beyond the existing built up area, the land is (in the main) Green Belt and thus the Development Plan has built up areas (which define where development can go) and Green Belt boundaries which arise from a housing requirement which is out of date. The approach I have taken here is in line with the Suffolk Coastal v Hopkins Homes: Richborough Estates v Cheshire East (2017) (CD K1) and specifically paragraph 63 of the Supreme court judgement:
- He [the Inspector] was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from settlement boundaries that in turn reflect out-of-date housing requirements (paragraph 63).**
- 5.73 Based on the Council's Statement of Case, it should be an agreed position that settlement boundaries and Green Belt boundaries are out of date.

- 5.74 I set out in Table 1 below, the policies which I consider are the most important policies for the determination of the application (noting that the NPPF specifically references the application rather than the appeal). The position of whether they are out of date is agreed with the Council by virtue of paragraph 4.2 of their Statement of Case.

Table 1

Core Strategy Policy	Up to Date	Most Important Policy
SP1 Creating Sustainable Development	No	Yes
SP2 Presumption in favour of sustainable development	No	Yes
CS1 The Supply of New Housing	No	Yes
CS2 The Location of New Homes	No	Yes
CS3 Housing Delivery and Infrastructure	No	Yes
CS4 Affordable Housing	No	Yes
CS7 Housing Mix	-	No
CS12 The Enhancement of the Natural Environment	No	Yes
CS13 The Green Belt	No	Yes
CS14 Protection of Enhancement of Heritage Assets	-	No
CS16 Environmental Impact of New Development	No	Yes
CS17 Energy and CO2 reductions	-	No
CS18 Access to Services	-	No
CS19 Key Community Facilities	-	No
CS20 Securing Mixed Use Development	-	No
CS21 Standard Charges and Other Planning Obligations	-	No
CS22 Securing a High Quality and Accessible Environment	-	No
CS24 Development and Accessibility to Services and Employment	-	No
CS25 Accessibility and Parking	-	No
CS26 Promoting Alternatives to the Car	-	No

- 5.75 The relevant SADM policies are listed in Table 2 overleaf:

Table 2

SADM	Up to Date	Most Important Policy
SADM1 Housing Allocations	No	Yes
SADM 3 Residential Developments	-	No
SADM19 Biodiversity and Habitats	-	No
SADM 11 Landscape Character	No	Yes
SADM 12 Trees, Landscaping and Development	-	No
SADM 13 The Water Environment	-	No
SADM 14 Flood Risk	No	Yes
SADM15 Sustainable Drainage System	No	Yes
SADM16 Watercourses	-	No
SADM17 Water Supply and Water Waste	-	No
SADM19 Waste Storage in New Development	-	No
SADM20 Environmental Pollution and Development	-	No
SADM22 Green Belt Boundary	No	Yes
SADM26 Development Standards in the Green Belt	No	Yes
SADM29 Heritage Assets	-	No
SADM30 Design Principles	-	No
SADM37 New and Improved Open Spaces	-	No
SADM38 The Road Hierarchy	-	No
SADM40 Highway and Access Criteria for New Development	No	Yes

- 5.76 The policies identified in bold above comprise the most important policies for the determination of the application as per paragraph 11d of the NPPF. It is also agreed with the Council (who conclude all “relevant” policies are out of date) that they are out of date for the purpose of this appeal.
- 5.77 Whilst not cited in the Reasons for Refusal – Policy SADM1 and SADM22 are clearly ‘most important policies for the determination of the application’ as they deal with the allocation of sites (in accordance with numbers set out in the now out of date Core Strategy) and align the Green Belt to meet those numbers. The reasoned justification to Policy SADM22 identifies the changes which have been made to the GB since the 2003 Local Plan – these are identified as:

- a) In accordance with the Core Strategy, the former Shenley Hospital housing estate has been removed from the Green Belt.
- b) There have been a few minor adjustments to reflect existing development and make the boundary more defensible: i.e. • remove Colney Fields, Barnet Road (M25 Junction 22) from the Green Belt; • remove the Spire Hospital, Heathbourne Road, Bushey Heath from the Green Belt; and • re-draw the boundary around Oakbank; 5-23 (odd nos.) Watling Street; First Place Nursery; and 10 Cobden Hill, Radlett to form a more logical boundary.
- c) The following site is allocated for housing development in Policy SADM1 and has been removed from the Green Belt: • Print Works at Bushey Hall Golf Course, Bushey (Site H4) (d) The following land is designated as Safeguarded Land for Employment Development in Policy SADM9 and is removed from the Green Belt: • Land on Rowley Lane adjacent to the Elstree Way Employment Area, Borehamwood.
- d) Following a review of safeguarded land for housing, land at Byron Avenue/Vale Avenue, Borehamwood is returned to full Green Belt status.

5.78 In dealing with the assessment of the most important policies, I turn to the judgement of Wavendon Properties Ltd and SoS for Housing Communities and Local Government and Milton Keynes Council [2019] EWHC 1534 Admin (**CD J8**). Paragraph 56 of the judgement sets out the approach to be taken in requiring decision-takers to consider individually whether policies could be out-of-date, and form an overall view as to whether the 'basket' of policies are out of date as part of a planning judgement:

"Mr Honey contended that there was no warrant for the interpretation that once one of the most important policies for determining the application had been found out-of-date the tilted balance would apply. He observed that the policy specifically does not say that the tilted balance would apply when "one of" or "any of" the important policies for determining the application has been found to be out-of-date. To answer the question posed by paragraph 11(d) it is necessary, having identified those policies which are most important for the determination of the application, to examine them individually and then consider whether taken in the round, bearing in mind some may be consistent and some in-consistent with the Framework, and some may have been overtaken by events and others not, whether the overall assessment is that the basket of policies is rightly to be considered out-of-date. That will, of course, be a planning judgment dependent upon the evaluation of the policies for

consistency with the Framework (see paragraph 212 and 213) taken together with the relevant facts of the particular decision at the time it is being examined”.

- 5.79 For the reasons which are expanded upon above, it is my opinion that the most important policies for determining the application should be considered out of date. I take this view in the context of the housing shortfall, extent of built up area and Green Belt boundaries – which go to the heart of the principle of the acceptability of the development, being out of date. Together they set the amount and locational strategy for the delivery of housing, including restricting the location of development.
- 5.80 As I have explained above, given that the policies are out of date, Policy SP2(b) directs us to consider the test at paragraph 148 of the NPPF, i.e. whether the scheme’s benefits clearly outweigh its harms, including harm to the Green Belt. For reasons I develop in the following sections of my evidence, my view is that the test is passed in favour of allowing the appeal.
- 5.81 In consequence, I find however there is no conflict with the DP taken as a whole. In which case, pursuant to Section 38(6) TCPA 1990 the proposal should be granted planning permission unless material considerations suggest otherwise. I do not consider that other material considerations do indicate otherwise. However even if the Inspector were to disagree with me, then it is my firm opinion that other material considerations indicate a decision other than that which is in accordance with the Development Plan. I return to the overall planning balance in Section 9.
- 5.82 The following section reviews what I consider to be the other material considerations which weigh in favour of the Appeal Scheme.

6.0 OTHER MATERIAL CONSIDERATIONS

Emerging Planning Policy

Hertsmere Local Plan Review

- 6.1 Despite the requirement for a partial review of the Core Strategy to be complete within three years of the adoption of the Core Strategy and for a subsequent Local Development Scheme (LDS) showing the review to be completed in 2018, this has never been completed.
- 6.2 HBC have undertaken a number of consultations in respect of the new Local Plan since 2016. The Appellant has responded to these consultations on each occasion and has promoted the Appeal Site for development at every opportunity.

Local Plan Launch (Winter 2016 – Spring 2017)

- 6.3 The Council published a newsletter seeking comments on the most important issues which they felt that the plan should address (**CD G10**).

Issues and Options (October / November 2017) (CD G11)

- 6.4 The Council carried out Issues and Options consultation in late 2017. This document looked at the proposed Vision for the Borough; the background to the current planning issues faced and finally looked at approaches to meeting future development need.
- 6.5 Bushey was confirmed as one of 5 main communities (along with Borehamwood and Elstree, Potters Bar, Radlett and Shenley). The document identifies that 79% of the ward is designated as Green Belt and that whilst the Green Belt has prevented the outward expansion of London; it has reduced the amount of land available for development which has contributed to rising house prices in London and the south east.
- 6.6 It was noted that whilst the population was expected to grow by more than 20,000 people over the next 20 years; the number of working age people was expected to decline and the number of residents aged 75+ was likely to increase by more than 50% (page 12). The lack of affordable housing options for those under 45 was identified as a contributor as to why younger people were leaving the Borough. Page 14 of the I&O document identifies the need to increase the number of new homes built and ensure that many of the new homes were affordable homes noting that the gap between local incomes and the cost of new housing is a particularly severe problem in Hertsmere. It was noted that the

cost of a new home in the Borough was more than 11 times annual income levels (Page 15). At this point in time, the Council identified a housing target of circa 600 new homes per annum. Over double that in the adopted Core Strategy.

- 6.7 The Council also canvassed views on the potential for new developments to include up to 10% self build properties.
- 6.8 With regard to potential options for meeting growth, Bushey was identified as one of 4 areas where, together up to 3,000 new homes could be delivered on brownfield sites via significant increases in densities in more central locations and limited increase in densities elsewhere (pg. 24). However it was confirmed (page 25) that whilst this approach had benefits (reducing the amount of Green Belt land to be released) this would not meet the full level of housing need (particularly affordable housing); that there were downsides to higher density development and that multiple smaller sites would not deliver the same level of infrastructure funding.
- 6.9 A further growth option under consideration was 'new garden suburbs' involving the expansion of existing towns through the creation of new neighbourhoods. Bushey was one of 4 settlements identified (page 27) with the amount of development list as a range of 300 – 500 new homes along with a new local centre and a new primary school and new healthcare provision amongst other items. The map included at page 29 shows the 'Areas of search for new garden suburbs' and clearly shows that for Bushey, the search area falls between the north eastern edge of Bushey and the M1 motorway and includes the Appeal Site.

Potential Sites for Housing and Employment (CD G12)

- 6.10 This consultation was carried out in October 2018 and include community engagement events carried out by the Borough Council across the main settlements.
- 6.11 Paragraph 1.7 confirms that the adopted CS could only identify land for around 45% of the housing need in the Borough by 2027 due to its focus on protection of the Green Belt; and stressed the need to ensure the Council had an up to date Local Plan.
- 6.12 A summary of the feedback on the development options is included in a table on page 3 of the document and notes that with regard to 'Growth through new garden suburbs' this was generally supported provided they were well located and able to support the infrastructure needs of the new and existing residents.

- 6.13 Again, the need to develop on Green Belt land to provide sufficient housing was stressed (paragraph 1.19).
- 6.14 The consultation covered 3 main parts:
- (i) Potential housing locations (strategic sites capable of delivering at least 250 new homes)
 - (ii) Potential employment locations
 - (iii) Other site options (housing sites for up to 250 new homes).
- 6.15 The document cites 5 main data sources as the basis upon which the sites contained in the document have derived:
- (i) Land promotions / Call for Sites responses
 - (ii) Land Availability Assessment
 - (iii) Green Belt Assessment
 - (iv) Accessibility Mapping
 - (v) High level transport assessment
- 6.16 I review the above in further detail later in this section.
- 6.17 Within this document, the Appeal Site was identified as Site B1 (page 10). 2 further sites were identified Site B2 and Site B3 (a former golf club and course on Council owned land). The land immediately to the north western site boundary (Land at Harts Farm) was identified separately as an 'Other potential development site' (page 12).
- 6.18 An 'Infrastructure Overview' was provided at Section 4 of the document. This set out the key infrastructure needs for Bushey which included a new school site (it is not identified as to whether this is primary or secondary); potential healthcare needs; and significant investment in local public transport and measures to reduce the number of cars on the road by locating development near to local services.
- 6.19 The pro-forma for Site B1 is set out on pages 46 – 48 (inclusive) and includes both the benefits / opportunities arising from the development of the site and also the challenges / constraints. No overall conclusion was drawn on any of the 3 sites being considered.
- 6.20 It was at this stage that the Appellant was assigned a Planning Policy Officer and has since attended a number of meetings with Planning Officers (including the Head of Planning; the Head of Planning Policy and the Planning Portfolio Holder) to discuss the merits of the Appeal Scheme.

- 6.21 In October 2019, at the request of the Council's Planning Policy Team, the Appellants attended a meeting of the Planning Panel (which comprised a number of Councillors charged with progressing the Local Plan review) to present the Appeal Site to them and to answer any questions.
- 6.22 The Appellant was asked by HBC to submit detailed information regarding the Appeal Site and its proposals on several occasions. These submissions were made in December 2019 (**CD G17**), November 2020 (**CD G18**) and February 2021 (**CD 19**).
- 6.23 In addition during this period, the Appellant was also provided with draft policy wording for comment to support a draft allocation in a potential Regulation 19 version of the plan, which was anticipated to be the next version of the draft plan at that point in time.

Employment Call for Sites (March 2021)

- 6.24 The Council carried out a further employment call for sites consultation in March 2021 to include new sites more recently submitted for assessment. At the same time, a proposal for a large film studio at Borehamwood was submitted to the Council and released to the press (Hertswood Studios). Whilst it is not directly related to the Appeal Site, it is of relevance due to the impact this had on the review of the Plan as set out below.

Local Development Scheme (April 2021)

- 6.25 Due to the Council's desire to, amongst other things, include the film studio proposal as a draft allocation in the emerging plan, the decision was taken not to proceed to Regulation 19 stage but to instead progress a Regulation 18 plan, for consultation in late 2021; in advance of submission in July 2022 and adoption in June 2023.

Draft Hertsmere Local Plan Regulation 18 (2021)

- 6.26 The Council consulted on the Draft Hertsmere Local Plan Regulation 18 document (**CD G4**) between October and December 2021. One of the Strategic Objectives was to "*Enable the delivery of a minimum of 12,160 new homes.*" This was set out in draft Policy H1 (between 2022 and 2038 at a rate of 760 homes per annum). The draft Plan highlighted Bushey as one of two 'Tier II Settlements' (along with Potters Bar), second only to Borehamwood and Elstree (a single combined settlement).
- 6.27 Table 2 (page 16) identifies that the Local Plan will continue to prioritise the delivery of homes within the 4 main settlements (Borehamwood and Elstree, Potters Bar, Bushey and

Radlett) with optimisation of density. It was identified that a total of 2,765 new homes could be delivered across the plan period on brownfield sites in these 4 largest settlements. This equates to 3.6 years supply (out of 16 – so not even a quarter) and results in the need for land for a further 9,395 homes to be found elsewhere.

6.28 Table 3 (page 17) sets out that allocations totally 2,340 new homes are proposed to be delivered in Bushey; as part of a total delivery of 2,895 new homes in Bushey (Table 9, page 57), comprising (in addition to the allocations) 315 new homes (committed developments); 240 new homes (windfall development).

6.29 The Spatial Distribution (page 57) identifies that:

“The geographical distribution of new homes to meet this target will be in accordance with the Local Plan objectives and spatial growth strategy and all relevant policies in the development plan for the borough. New homes will be located on sites which are, or will through the policies of this plan be made to be, sustainable including through the availability or provision of necessary infrastructure. Sites for new homes will also be required to respect the character of the area in which they are located, integrate well with the scale and pattern of local development, avoid having an adverse impact on existing communities and environments, and provide the framework for the creation of healthy, safe and inclusive communities throughout the borough”.

6.30 The Appeal Site is identified as part of a potential development site (Site B1) (pg. 87) and thus in identifying the site as a preferred site, it follows that in accordance with the proceeding paragraph, the Council considered that:

- The Appeal Site is sustainable or capable of being made sustainable.
- The development of the appeal will respect the character of the area.
- The development of the appeal site will integrate well with the scale and pattern of local development,
- The development of the appeal site will not have an adverse impact on existing communities and environments.
- The development of the appeal site will be part of an overall development strategy which meets local plan objectives and all relevant policies in the Development Plan (as proposed) and will provide a framework for the creation of healthy, safe and inclusive communities throughout the Borough.

6.31 Infrastructure Delivery (page 21) identifies the need for a primary school on the Appeal Site and a new secondary school in Bushey (location to be determined). A separate site was proposed for healthcare provision.

6.32 The 'Individual Place Strategy' for Bushey begins at page 30. It is noted that Bushey is made up of three main areas (Bushey Heath, Bushey Village and North Bushey) which are both distinguishable from each other but also separate from the nearby urban areas of Watford (to the north) and Stanmore (to the south). Key challenges are listed as:

- Significant eastward expansion is limited by the town's position relative to the M1 and A41.

(Appellant comment: it suggests that the Council see the A41 and M1 as permanent defensible boundaries to the eastern edge of Bushey (the latter forming the eastern boundary of the Appeal Site).

- Significant amount of new housing in Bushey, primarily on smaller development sites, with over 1,300 new homes built since 2012/2013.

(Appellant comment: Bushey is identified as a tier II settlement in the draft plan. The delivery of multiple smaller sites will have likely occurred with little accompanying infrastructure funding / delivery).

- Growth has impacted on levels of traffic and an increased demand on local services including education and health provision

(Appellant comment: a comprehensive sustainable transport package is proposed. A primary school (or alternative form of education provision – see Section 7 of my evidence) is provided on site. The Council identified a different site (B4) for healthcare provision).

- Locating any additional required schools

(Appellant comment: primary school provision is provided for on the Appeal Site).

- There is also a modest deficit across all types of open space and relative green gaps in accessibility in several locations.

(Appellant comment: It is agreed at paragraph 16 of the signed SoCG that a significant level of public open space is provided on the Appeal Site).

- Narrow Green Belt gaps between Bushey and Watford

(Appellant comment: the development of the appeal site does not impinge on the Green Belt between Watford and Bushey).

- Expansion of the retail "offer" and leisure activities is constrained by the proximity to Watford and the limited availability of suitable sites.

(Appellant comment: whilst the site is not of sufficient size to accommodate a new stand alone retail / leisure offer, the site is however proposing a community / mobility hub, incorporating Class E uses, which will serve both existing and new residents).

6.33 The objectives for Bushey are listed – I review these objectives below:

1. Deliver new homes across the area meeting local needs through an appropriate and affordable mix of housing.
The Appeal Scheme will deliver a mix of market tenure housing; along with 40% affordable housing and 5% of market housing as self-build / custom build housing.
2. Deliver a sustainable new neighbourhood north of Bournehall Avenue and Farm Way (Compass Park) including a new primary school and public park serving the site and wider community.
Whilst this objective relates to the Compass Park development (site B2), the Appeal Scheme will deliver both a primary school and significant open space.
3. Deliver a sustainable new neighbourhood south of Elstree Road (Heathbourne Green), centred on a new supported and extra care housing scheme, incorporating a new transport hub and public open space.
Again, whilst not an objective directed towards the Appeal Scheme, the Appeal Scheme will deliver a community facility/ mobility hub appropriate to the scale of development and significant open space.
4. Secure an appropriate and sensitively designed redevelopment of the former Bushey Golf and Country Club, focussed primarily on the previously developed part of the site.
Not applicable to the Appeal Scheme
5. Make provision for any future relocation and expansion of Little Bushey surgery.
The draft policy for B1 does not include provision for a new surgery. The Council has identified Site B4 for this.
6. Secure the provision of enhanced access for local communities into the adjoining countryside.
The Appeal Scheme includes significant open space on land which is currently private but through which a PROW runs. The dedication of further land as open space will meet the objective of securing enhanced access into adjoining countryside.
7. Support Bushey Village and High Road, Bushey Heath district centres as attractive daytime and evening destinations.
Additional population will assist in supporting all existing centres.
8. Reduce traffic congestion and increase the availability and use of sustainable modes of transport both within Bushey and connecting the area with Watford and other locations.

A comprehensive sustainable transport package as agreed with Hertfordshire County Council in their capacity as highway authority is proposed which will increase the availability of sustainable modes of transport in Bushey.

9. Support economic development through the allocation of additional employment land off the A41/ Elton Way.

This objective is not applicable to the Appeal Scheme.

6.34 With regard to the identified community facilities (page 32), I comment as follows:

- Transport: a comprehensive sustainable transport package has been agreed with Hertfordshire County Council as Highway Authority and also agreed with National Highways in relation to the Strategic Road Network. This will benefit existing as well as proposed new residents.
- Education – a new for primary school provision is identified – land for a primary school is provided on site as agreed with Hertfordshire County Council.
- Health – an alternative site (Site B4) has been identified for this.
- Parks and Open Space – as confirmed a paragraph 6.40 of the SoCG, significant open space provision will be provided on the Appeal Site.

6.35 The Appeal Site was identified (site ref B1 – see page 87) for removal from the Green Belt and a sustainable urban neighbourhood of 350 homes. The draft allocation included the land to the north / north west of the Appeal Site, which whilst promoted jointly with that landowner at that point in time, does not form part of the Appeal Scheme. The masterplan included within the policy (insofar as it relates to the Appeal Site) broadly mirrors that considered as part of the Appeal Scheme.

6.36 It is therefore abundantly clear that as of December 2021, HBC (both Officers and Members) considered that exceptional circumstances existed to remove the Appeal Site from the Green Belt and allocate it for residential development.

6.37 However, at a meeting of Hertsmeres Full Council on 27th April 2022 (**CD G3**) it was unexpectedly agreed to 'set aside' the current Regulation 18 draft Local Plan but continue the local plan process by completing consideration of the Regulation 18 engagement responses and carrying out additional work as necessary to inform a local plan spatial strategy, whilst awaiting clarity from the Government on changes to law or policy affecting that matter.

6.38 There is currently no revised timetable for the preparation of the new Local Plan, nor an updated LDS. However it is noted that Paragraph 6.21 of the Full Council Report advised that:

"...it is likely that the additional housing, employment and other evidence base reviews and work will take around a year and if a decision is made to pursue changes to the Local Plan using this information, there could be another 12 months to update other evidence and undertake further Regulation 18 consultation, and then following that undertake a Regulation 19 Publication of the Local plan".

- 6.39 As such, it is anticipated that there will be at least a two-year delay to the adoption of a Local Plan. Amongst many planning implications of a delay to plan making, Officers advised:

"It will take longer for Hertsmere to be able to establish a five year supply of land. Hertsmere currently only has a 2.5 year supply of housing land, this will most likely worsen it in the medium term."

- 6.40 It is agreed in paragraph 5.10 of the SoCG, that the evidence base underpinning the draft Local Plan is a material consideration in the determination of the Appeal and I review this below.

Evidence Base to the Emerging Local Plan

South West Hertfordshire Local Housing Needs Assessment (LHNA) (2020)

- 6.41 The LHNA (2020), used as evidence for the Draft Local Plan, recommends that Local Authorities seek to deliver a minimum of 4,043 dwellings per annum across the South West Hertfordshire HMA. Although calculated over the 2020-2030 period, the LHNA can also be applied to the latter part of the Plan period beyond 2030. The LHNA calculates a Local Housing Need of 717 dwellings per annum for the Borough of Hertsmere.

Housing and Economic Land Availability Assessment (HELAA) (2019) (extracts at **CD G13**)

- 6.42 The Site is identified in the HELAA as: HEL201 Land at Little Bushey Lane and it is concluded within the assessment of the Site that *"under the current policy framework, the Site would not be suitable for development due to its Green Belt designation. Were the impact of the Green Belt to be outweighed by the wider sustainability benefits of delivering additional homes in this location, the Site could potentially be suitable, available and achievable..."*.
- 6.43 The HELAA also included an assessment of brownfield opportunities to ensure that "the potential of all brownfield land was maximised. This included:

- 1) Reviewing the densities and capacities of all potential sites located within major settlement boundaries. (Tier 1, 2 and 3 settlements).
 - 2) Assessing the utilisation of local vacant housing stock as a source of untapped brownfield housing supply.
 - 3) Reviewing the achievability and deliverability of Hertsmere's owned assets.
 - 4) Contacting owners/occupiers of major brownfields sites who have not yet submitted any of their land holdings.
- 6.44 Paragraph 3.3 also confirms that the Council has looked at the potential for an uplift in density mindful of the emphasis in the NPPF and increased the target density multiplies in the most sustainable locations.
- 6.45 An assessment of empty homes was also undertaken. The numbers from this source were relatively low (70 homes across the plan period) and was not considered by the Council that this represented significant underutilisation of local housing stock or a major source of untapped brownfield land supply (paragraph 3.22). The Council also reviewed their own landholdings to ensure that all available brownfield land within the Borough was maximised. Finally, the Council also directly approached owners of brownfield sites which had the ability to accommodate a reasonable quantum of development. This does not appear to have yielded any significant additional housing sites which were previously unknown or unaccounted for.
- 6.46 The HELAA proposes a strong methodology for capturing all known brownfield land options to support a case for exceptional circumstances for the release of land from the Green Belt to meet housing need. Therefore as stated in paragraph 6.27 of my evidence, not even a quarter of the current housing need can be met through the use of brownfield land alone. Not matter which way you turn, the conclusion that Green Belt land needs to be released to meet both market and affordable housing need is inevitable and was a conclusion HBC previously reached.

Green Belt Assessment

- 6.47 HBC published their Stage 1 Green Belt Assessment (Rev B) in January 2017 (**CD G7**). The purpose of the Stage 1 Assessment was to analyse the existing Green Belt and identify strategic areas for further analysis; and review these strategic areas against the aims and objectives set out within the NPPF and score them by how well they contribute towards the purposes of the Green Belt.

- 6.48 HBC published their Stage 2 Green Belt Review in March 2019 (**CD G8**). The purpose of the Stage 2 Assessment was to undertake a more detailed review of the parts of the Green Belt which might contribute towards the purposes of the Green Belt identified at Stage 1, and to ascertain whether exceptional circumstances can be demonstrated to allow their release from the Green Belt.
- 6.49 The Stage 2 Assessment identifies the Appeal Site as being located within Sub Area 57 (SA-57), which encompasses a swathe of land between the existing settlement edge of Bushey to the west and the M1 transport corridor to the east (a land area greater than the Appeal Site); and includes the recent development with the immediate setting to the north of the Site. With respect to the NPPF purposes, SA-57 receives a score of '0' for purposes 1 and 4, and a score of '3' in relation to purpose 2, with a score of '2' for purpose 3. The assessment identifies that SA-57 meets the Green Belt Purpose Assessment criteria moderately and makes a less important contribution to the wider Green Belt. Accordingly, SA-57 along with the adjoining sub-area SA-54 which runs along the boundary of the recent residential development within the immediate setting to the north of the Site off Rossway Drive, are together recommended for further consideration under reference RC-3.
- 6.50 This matter is covered further in the evidence of Mr. Clark.

Landscape and Visual Sensitivity Assessment (LVSA) (2020) (**CD G14**)

- 6.51 The Landscape and Sensitivity Assessment (LVSA) focuses on the relative landscape sensitivity of different areas of the Borough for residential and employment development. The Assessment aids decisions on the allocation of sites in the new Local Plan and helps guide consideration of individual planning applications in and around the areas assessed.
- 6.52 The LVSA identifies the Site as located within the Borehamwood Plateau Landscape Character Area (LCA), as Bushey Fringe (22c). Bushey Fringe (22c) received a sensitivity score of medium in regard to landscape sensitivity for residential housing development / smaller flats. The Assessment concludes that Bushey Fringe (22c) is an urban fringe area with lower landscape sensitivity.
- 6.53 Again this matter is considered further in the evidence of Mr. Clark and I draw on his conclusions in this regard.

Settlement Hierarchy and Accessibility Mapping Analysis (CD G15)

- 6.54 The purpose of this report is to analyse currently settlements across the Borough to determine current capacity and potential for growth and to map accessibility across the Borough to help determine where potential growth could be located. The profile for Bushey can be found on pages 14 and 15 and confirms Bushey to be the second largest settlement (in terms of population and households) after Borehamwood & Elstree.
- 6.55 Bushey was re-confirmed as a Tier II settlement (page 26) “with bus and nearby rail links to Watford and London, significant pockets of local employment and a wide variety of shops and services”.
- 6.56 With regard to the Accessibility Mapping, the Appeal Site is assessed as ‘low accessibility’ however given Bushey itself it’s a Tier II settlement and the Council objectives included sites which could be made accessible; it doesn’t represent a significant constraint to the development of sites especially when a comprehensive package of sustainable transport measures will be delivered as a result of the appeal scheme. Indeed, it is noted that other draft allocations (B1, EMP2 and EMP3) also show as ‘low’ on the accessibility mapping.

Strategic Flood Risk Assessment (SFRA) (May 2018) – CD G16

- 6.57 Mr. Whittingham deals with flooding matters in his evidence, however I highlight that the SFRA was produced as part of the evidence base for the Local Plan and was thus a document which was used by HBC when considering the allocation of the site. The SFRA considers all forms of flooding in its assessment.

South West Herts Joint Strategic Plan

- 6.58 Along with Dacorum Borough Council, St Albans City and District Council, Three Rivers District Council and Watford Borough Council, Hertsmere has commenced work on a Joint Strategic Plan (JSP) for the South West Hertfordshire area. This work is also being supported by Hertfordshire County Council. Each council will still be responsible for preparing their own Local Plan, but a JSP will support local planning work across South West Hertfordshire, setting the strategic framework and shared priorities within which individual local plans can be prepared. Work began in 2021 and remains at an early stage, with a 2050 – Realising Our Potential consultation taking place in 2022.

Supplementary Planning Documents

- 6.59 Relevant SPD’s are summarised below:
- Planning and Design Guide (2006)

I note the age of this document and the proposed use of a Design Code condition (as agreed with the Council) to secure a high quality development.

- Biodiversity and Trees (2010)

The Appeal scheme delivers a net gain in bio-diversity and it is agreed in the SoCG that there will be no adverse arboricultural impact.

- Parking Standards (2014)

This is a matter for consideration at Reserved Matters.

- Affordable Housing (2015)

A Section 106 Agreement dealing with affordable housing is in progress with the Council. Affordable housing provision via the Appeal Scheme (40%) exceeds the minimum 35% requirement.

- Developer Contributions Framework (2021).

A Section 106 Agreement dealing with affordable housing is in progress with the Council.

6.60 In addition, the Council have published 3 SPD's for consultation however at the time of writing my evidence, these have yet to be adopted; and are not therefore considered to be material considerations at this point in time.

- Biodiversity Net Gain Supplementary Planning Document (2022)
- Draft Carbon Offset Fund Supplementary Planning Document (2022)
- Parking Standards Draft Supplementary Planning Document (2022)

6.61 The Appellants responded to the above documents during the consultation period.

The Need for Housing

6.62 I enclose at my Appendix 1, evidence dealing with housing land supply matters produced by my colleague Mr Patterson-Neild. I adopt his conclusions as set out below

6.63 The Council does not have an NPPF compliant assessment of local housing need as required by paragraph 61 of the Framework. As confirmed in the Suffolk Coastal Supreme Court Judgment, where housing supply policies failed to meet the objectives set by the then Paragraph 47 of the 2012 NPPF, the Inspector in that case **"rightly recognised that they should be regarded as 'out of date' for the purposes of Paragraph 14."** In terms of paragraph 11d (the equivalent paragraph of the 2021 Framework to Paragraph 14 of the 2012 version), the Development Plan is not up-to-date as the housing requirement policy CS1 of the Core Strategy was adopted in 2013 with the Inspector concluding at that time "not been adequately justified against RS [Regional Strategy]."

- 6.64 The emerging Local Plan is not expected to be adopted until 2025 at the earliest and this represents at least 2 year's delay to the previous LDS and would mean adoption of a NPPF compliant housing requirement some 9 years later than required by the Core Strategy.
- 6.65 I conclude that Hertsmere only has **1.23 years supply of deliverable housing sites.** Even without the 5% buffer being applied (should the NPPF be changed as proposed by the recent consultation proposal) the Council would require 727 dwellings per annum (3,635 over 5 years), and this would equate to a supply of 1.3 years. As outlined by the PPG, major sites with outline planning permission or site allocations (or indeed sites without planning permission) require further evidence demonstrate that they are deliverable in the 5-year supply period. My calculations are detailed in Table 3 below.

Table 3

Housing Land Supply Table	Hertsmere	Appellant
5 year Standard Method Requirement inc 5%	3817	3817
Category of Site		
Planning Permissions under construction	296	282
Prior Notifications under construction	29	29
Planning Permissions (inc 5% lapse)	374	351
Prior Notifications (inc 5% lapse)	168	168
HELAA Sites	290	0
AAP (excl. sites with pp)	250	0
Local Plan Allocations (excl. sites with pp)	26	0
Windfall Allowance	280	112
Total Supply	1713	942
Shortfall	2,104	2,885
Years Supply	2.25	1.23

- 6.66 In the context where the Council has failed to bring forward NPPF compliant policies for the supply and delivery of new homes, it is concerning that the Council has elected to set aside its Local Plan.
- 6.67 It is for the council to provide that clear evidence of a realistic prospect of delivery for allocated sites without planning permission and HELAA sites, yet it has failed to do so.
- 6.68 The failure to review the Local Plan by 2016 is a significant factor in this. The **magnitude of this shortfall is clearly both serious and significant and represents a chronic**

failure to deliver the new homes needed in Hertsmere: and should be given substantial material weight in the consideration of this appeal especially in the context where there is no clear way proposed by the Council to address this shortfall.

- 6.69 Therefore, as I consider that Hertsmere Council does not have an NPPF compliant assessment of local housing need as required by paragraphs 61 and 74 of the Framework, I therefore consider, as do the Council, that the policies which are most important for the determination of the application are out of date and I therefore consider that limited weight should be attributed to the following policies which are important for determining the application as the presumption in favour of sustainable development contained in Paragraph 11d of the Framework is engaged. These policies comprise CS1 (Scale of New Housing), CS2 (Distribution of Housing), both of which are policies that either prescribe the level of housing growth to be accommodated or their distribution, and or relate to built up area boundaries and control development for housing out with such boundaries.

AFFORDABLE HOUSING

Affordable Housing Needs

- 6.70 I draw on the evidence of Mr Stacey in this respect and concur with this views.
- 6.71 Policy CS4 of the Core Strategy states that "*The policy equates to an affordable housing target of 1,140 from 2012 to 2027*", equating to 76 per annum.
- 6.72 The 2016 SHMA identifies a need for 434 affordable dwellings per annum between 2013 and 2036, equivalent to 9,982 affordable dwellings over the 23-year period.
- 6.73 The most recent assessment of affordable housing is contained within the 2020 LHNA which identifies a need for 503 affordable dwellings per annum between 2020 and 2036, equivalent to 8,048 affordable dwellings over the 16-year period.

Affordable Housing Delivery

- 6.74 Since the start of the 2016 SHMA period in 2013/14, affordable housing completions have averaged 43 net affordable dwellings per annum, resulting in a shortfall of -3,418 affordable dwellings between 2013/14 and 2021/22m equivalent to an annual average of -380 affordable dwellings.
- 6.75 Against the most recent assessment of affordable housing need (2020 LHNA), a shortfall of -874 affordable dwellings has arisen in the first two years of the 2020 LHNA period between 2020/21 and 2026/27.

- 6.76 The Core Strategy sets a target of 76 affordable dwellings per annum during the plan period. Whilst this target is out of date, nevertheless since 2012/13 there has also been a shortfall of -173 affordable dwellings.

Affordability Indicators

- 6.77 The following affordability indicators are material considerations and in this particular case demonstrate a worsening situation in Hertsmere Borough for households seeking an affordable home:

Housing Register

- At 31st March 2022 there were 799 households on the Housing Register. This represents a 39% increase in a single year from 576 households at 31 March 2021.
- The wait to be housed in an affordable home within the area ranges from 21 months for a 1-bed affordable home through to 43 months for a 4-bed+ affordable home.

Help to Buy Register

- As of 22 February 2023, there are 354 households seeking shared ownership accommodation in Hertsmere Borough, of which 133 households are seeking accommodation in Bushey.

Homelessness

- In the 12 months between 1 April 2021 and 31 March 2022, the Council accepted 230 households in need of homelessness prevention duty, and a further 205 households in need of relief duty from the Council.

Private Rental Market

- A median private rent of £1,250 pcm in 2021/22 is 45% higher than the East of England figure of £865 pcm and 57% higher than the national figure of £795 pcm.
- A lower quartile rent of £1,050 pcm in 2021/22 is 50% higher than the East of England figure of £700 pcm and 76% higher than the national figure of £595 pcm.

Median House Prices

- An affordability ratio of 15.51 in Hertsmere Borough stands significantly above the national average of 9.05 (+71%) and above the East of England average of 10.53 (+47%).
- In 2022 median house prices in the MSOA (£545,000) were 8% higher than across Bushey Park Ward (£503,750), 3% higher than across Hertsmere Borough (£530,000),

71% higher than across the East of England (£318,275) and 102% higher than the national figure (£270,000).

Lower Quartile House Prices

- The lower quartile affordability ratio in Hertsmere Borough (17.93) stands significantly above both the national average of 8.04 and the East of England average of 10.4.
- In 2022 lower quartile house prices in the MSOA (£400,000) were 7% higher than across Bushey Park Ward (£375,000), the same price as Hertsmere Borough (£400,000), 70% higher than across the East of England (£235,000) and 122% higher than the national figure (£180,000).

The Future Supply of Affordable Housing

6.78 The Council's latest Five Year Housing Land Supply statement includes 1,713 dwellings coming forward in the next five years. If we were to theoretically assume that all of these sites would provide policy compliant levels of affordable housing (35%), this is likely to deliver only 600 affordable dwellings, equating to at best 120 per annum between 2022/23 and 2026/27. The projected delivery of 120 affordable dwellings per annum falls significantly short of the 503 affordable dwellings per annum required by the 2020 LHNA. It is important to note that this figure then falls substantially short of the 678 per annum figure required when back log needs are addressed in the next five years in line with the Sedgfield approach.

6.79 However as out above, it is my view (following the evidence of Mr Patterson-Neild) that only 942 dwellings are coming forward in the next 5 years then this would equate to 330 affordable homes; or only 60 affordable homes per annum over the next 5 years.

Conclusion

6.80 In light of the key findings of my evidence and the acute need for affordable housing within Hertsmere Borough and Bushey, I consider that **very substantial weight** should be attributed to the delivery of up to 124 affordable homes through the appeal scheme in the planning balance.

SELF BUILD / CUSTOM HOUSING

6.81 In review this matter and the need / weight to be attributed to it, I draw on the conclusions of Mr. Moger.

6.82 Central Government has been consistent in seeking to boost the supply of Self-Build and Custom Housebuilding for the past decade, starting with the 2011 Housing Strategy for England, and it is clear that there is national demand for this type of housing.

- 6.83 As recently as April 2021 the Government announced an Action Plan intended to scale up delivery and provide funding support for self and custom-builders and more recently, the 'Bacon Review' made a series of recommendations to Government to scale up the delivery of self-build and custom housebuilding.
- 6.84 The Government announced these recommendations will be considered through the Levelling Up and Regeneration Bill (LURB) and have proposed changes to the 2015 Self-Build and Custom Housebuilding Act (as amended) to ensure that only permissions genuinely for self-build and custom housebuilding are counted towards addressing the statutory duty to meet Register demand, any unmet demand is carried forward and that regulations will specify which types of development permission count towards the duty.
- 6.85 The requirement to deliver Self-Build and Custom Build homes is enshrined in statute and within national policy through both the NPPF 2021 and the PPG
- 6.86 Local authorities are required to address this through granting sufficient development consents to meet the demand for Self-Build and Custom Housebuilding arising within their administrative area and examining secondary data sources in addition to their Register numbers to obtain a robust assessment of demand.
- 6.87 There are no policies within the adopted Development Plan for the provision of self-build and custom housebuilding.
- 6.88 Full Council agreed in April 2022 to set aside the emerging Regulation 18 Local Plan and consequently there are no emerging policies for the provision of self-build and custom housebuilding.
- 6.89 There are at least 76 individuals and at least four associations³ of individuals on the Self-Build Register across Base Periods 1 to 8. Although the Council's Self-Build Register is an important tool to help gauge local demand and inform how many permissioned serviced plots need to be made available on a rolling basis each year by the Council, it cannot predict longer term demand for plots.
- 6.90 In Mr Moger's opinion current practice has shown that local Self-Build Registers only provide a short-term supply-led picture because they rely upon people knowing about the Self-Build Register and then Registering their interest. He considers that the numbers on

³ Information not provided on number of members within associations through FOI response

the Self-Build Register can therefore be a significant under-representation of latent demand.

- 6.91 Secondary data sources, such as Buildstore's Plot-Search and Custom Build Register platforms illustrate a demand for at least 1,085 plots in Hertsmere, of which 118 were in Bushey Park Ward.
- 6.92 Other secondary data sources indicate that as many as 1,710 people may be interested in building their own home in the foreseeable future and that annual needs could fall in the range of 51 to 72 plots per annum.
- 6.93 The importance of secondary data sources was recognised by Inspector Hayden in the Pear Tree Lane decision (**CD I19**) and Inspector Masters in the Bullen's Green Lane, Colney Heath decision (**CD I2**).
- 6.94 True demand for Self-Build and Custom Housebuilding can therefore be expected to lie between at least 76 individuals and four associations⁴ of individuals currently registered on the Council's Self-Build Register,⁵ the 1,085 plots through the Buildstore data, the 785-1,080 plots over the 15 year Core Strategy Plan period when AMA Market Research is used as a proxy, and as many as 1,710 people when using national survey data⁶ as a proxy.
- 6.95 The Appellant recognises that there is a substantial level of unmet need for this tenure of housing in Hertsmere. The importance placed upon the provision of Self-Build and Custom Housebuilding plots by statute and by both the NPPF and the PPG has also been recognised by the appellant, as have the recommendations of the 'Bacon Review' and the direction of travel with the proposed amendments to the 2015 Self-Build and Custom Housebuilding Act (as amended) through the LURB.
- 6.96 The Council places undue reliance upon CIL exemptions without further interrogation of the data. Previous appeal decisions have highlighted the lack of robustness to such an approach and that CIL forms are not a reliable proxy for actual delivery of self-build and custom housebuilding.

⁴ Information not provided on number of members within associations through FOI response

⁵ The market leading building plot search website in line with the provisions of the PPG

⁶ Based on ONS population estimates by local authority based by single year of age [extracted from NOMIS 27 February 2023]

- 6.97 When the data is interrogated for the permissions that the Council rely upon, only 38 of the permissions the Council rely upon contain any evidence other than a CIL Form that the application will be for self and custom build.
- 6.98 Resultantly, the Council has failed its statutory duty to meet Register demand for Base Periods 3 and 4 and it appears likely to fail in its duty for Base Period 5, which would result in a current cumulative shortfall of 16 plots
- 6.99 There are no adopted or emerging Plan policies for the provision of self-build and custom housebuilding and the future supply of self-build and custom housebuilding in Hertsmere appears highly uncertain without sites such as the appeal site making provision for serviced plots secured by legal agreement.
- 6.100 What is abundantly clear is that the Council need to take urgent action now to address unmet identified demand. Serviced plots secured by legal agreement – such as those proposed by the appeal scheme – are required to address both current and future demand.
- 6.101 In the absence of any adopted specific policy target's, specific monitoring indicator's or clear strategy to address the existing shortfall in delivery of Self-Build and Custom Build homes, it is unclear how Hertsmere Council intends to address ongoing demand as well as meet the existing shortfall without sites such as the appeal site.
- 6.102 The appellant recognises that there is a substantial level of unmet need for this tenure of housing in Hertsmere and that urgent action is required to meet the scale of demand identified.
- 6.103 The Committee Report considers that the provision of 10 serviced plots warrants significant weight. However, a number of appeal decisions have found that substantial weight has been afforded to the provision of serviced plots for self-build and custom housebuilding by Inspectors and the Secretary of State:
- Even where such provision is in line with policy requirements;
 - Where there has been statutory duty failure – even if only for a single base period;
 - Where secondary data sources demonstrate a level of demand that exceeds that on the Self-Build Register; and
 - Prior to demonstration of any statutory failure.

- 6.104 In reviewing the evidence of Mr Moger and adopting his conclusions, I consider that nothing less than substantial weight should be attributed to the provision of 10 serviced plots in the planning balance.

National Planning Policy Framework (NPPF) (July 2021)

- 6.105 The main parties are agreed that the NPPF (the Framework) is a material consideration that must be taken into account in the decision-making process and the last iteration of the framework was published on the 20th July 2021.
- 6.106 On 22 December 2022, the government began a consultation on a further revision of the Framework. The "Levelling-up and Regeneration Bill: Reforms to National Planning Policy" consultation closed on the 2nd March 2023. The on-line consultation portal confirms that *"a fuller review of the Framework will be required in due course, and its content will depend on the implementation of the government's proposals for wider changes to the planning system, including the Levelling-up and Regeneration Bill."*
- 6.107 At the present time, no weight can be given to the changes currently being consulted upon. This is confirmed in the advice to the Planning Inspectorate contained in PINS Note 14/22 on the 14th December 2022, which confirms that full weight must be afforded to the provisions of the NPPF (2021) and the PPG.
- 6.108 I identify the most relevant areas of each in the following part of this section of my evidence as appropriate.
- 6.109 The NPPF sets out the Government's planning policies for England and how these are expected to be applied. Its focus is primarily on achieving sustainable development and the matters to be considered.
- 6.110 Paragraph 7 confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. As such, the objective of sustainable development is summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 6.111 Paragraph 8 outlines three overarching objectives for achieving sustainable development – economic, social and environmental. These are independent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

- 6.112 At the heart of the NPPF is a presumption in favour of sustainable development which, as set out a paragraph 11(c) for decision-taking means **"approving development proposals that accord with an up-to-date development plan without delay"**; or (paragraph 11(d)) **"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date ⁽⁸⁾, granting planning permission unless:**
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (7); or**
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".**
- 6.113 Footnote 7 directs that that the policies referred to are those in this Framework (as opposed to those in the Development Plan) relating to, amongst other things, Green Belt and areas at risk of flooding.
- 6.114 Footnote 8 confirms that with regard to the most important policies being out-of-date, this includes situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. It is agreed between the Appellant and HBC in the SoCG that they cannot demonstrate a five year housing land supply. The Evidence of Mr Patterson-Neild concludes that HBC can only demonstrate a 1.23 year supply of deliverable housing sites. Furthermore, paragraph 4.2 of the Council's Statement of Case sets out that the Council consider that the policies "relevant" for the determination of the application are out of date, which must therefore include the 'most important policies',
- 6.115 Paragraph 20 makes clear that a plan should make sufficient provision for housing (including affordable housing). The thrust of this policy is not proposed for amendment under the NPPF (2022).
- 6.116 Paragraph 33 of the NPPF21 sets out the importance of reviewing plans within five years of adoption with footnote 21 confirming that the completion of a review within 5 years is not optional, rather it is a legal requirement. Hertsmere has not achieved this. The NPPF (2022) does not propose to amend this requirement.

- 6.117 It is noted that the circumstances under which an earlier review might be required is if local housing need is expected to change significantly in the near future. In respect of the Hertsmere Core Strategy, the housing figure was already out of date at the point of adoption, so it was incumbent upon Local Planning Authority to have pressed forward with a review of the plan expediently. This is something which they have not achieved.
- 6.118 Paragraph 38 identifies that local planning authorities should approach decisions on proposed development in a positive and creative way. Decision-makers at every level should seek to approve applications for sustainable development where possible.
- 6.119 Paragraph 60 clearly highlights that to support the Government's objective of **significantly boosting the supply of homes**, it is important that a sufficient amount and variety of land can come forward where it is needed.
- 6.120 Paragraph 63 outlines that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required.
- 6.121 With regard to the supply and delivery of housing, paragraph 74 identifies that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
- a) 5% to ensure choice and competition in the market for land; or
 - b) 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
 - c) 20% where there has been significant under delivery over the previous three years, to improve the prospect of achieving the planned supply.
- 6.122 Whilst amendments are proposed to this under NPPF (2022), it is the view of Mr. Patterson-Neild, and I concur, that housing delivery remains under 2 years with or without a buffer.
- 6.123 Paragraph 77 advises that to ensure implementation of housing proposals in a timely manner, local authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. The

Appellants are willing to reduce the time periods for the submission of reserved matters and implementation.

- 6.124 Paragraph 81 identifies that the Government places significant weight on the need to support economic growth. I enclose at my **Appendix 2** a report dealing with the significant economic benefits arising from the delivery of the Appeal Scheme.
- 6.125 Paragraph 92 stresses that planning should aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible and enable and support healthy lifestyles communities and to promote safe and accessible environments to discourage crime and disorder.
- 6.126 Section 9 (Paragraphs 104-109) relates to 'promoting sustainable transport' and requires all developments that generate a significant amount of movement to provide a Travel Plan and be supported by a Transport Statement or Transport Assessment.
- 6.127 Paragraph 110 sets out four matters which should be secured in development applications. These are listed as:
- a) Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - b) Safe and suitable access to the site can be achieved for all users;
 - c) The design of streets, parking areas, other transport elements and the content of associated design standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and
 - d) Any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 6.128 Paragraph 111 states that development should only be prevented or refused on highways grounds if there would be unacceptable impacts on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.129 Consideration has been given to public transport and non-vehicular movements in accordance with Paragraph 112 of the NPPF and a Transport Assessment Travel Plan was produced in accordance with Paragraph 113. A comprehensive package of sustainable transport measures have been agreed with the Highway Authority as detailed in the Section 106 Agreement.

- 6.130 Section 12 (Paragraphs 126-136) relates to 'achieving well-designed places'. Paragraph 126 highlights that good design is a key aspect of sustainable development. Paragraph 130 states that planning decisions should ensure that developments: function well; add to the overall quality of the area for the lifetime of development; are visually attractive; have appropriate and effective landscaping; are sympathetic to the local character including the surrounding built environment; maintain a strong sense of place; optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space); and create places that are safe, inclusive and accessible and which promote health and well-being with a high standard of amenity for existing and future users. It is not considered that the proposed amendments to the NPPF affect the way in which the design aspects of the Appeal Scheme should be considered.
- 6.131 The Appellant, in agreement with HBC has proposed the use of a Design Code to be delivered by condition.
- 6.132 Paragraph 134 identifies that permission should be refused for development of poor design especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Significant weight should be given to development which reflects local design policies and government guidance on design.
- 6.133 Paragraph 137 identifies the following five purposes of the Green Belt:
- a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.134 The contribution that the Appeal Site makes to these purposes of the Green Belt is addressed through the Evidence of Mr Clark, which I review in Section 9 of my evidence.
- 6.135 Paragraph 140 goes on to state that Green Belt boundaries should only be altered " *where exceptional circumstances are fully evidenced and justified*". Clearly at the time of the Regulation 18 consultation on the Draft Local Plan, HBC considered that exceptional circumstances could be demonstrated to justify the removal of the Appeal Site from the Green Belt.

6.136 Paragraph 142 states that “*When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account.*” In accordance with this, and in light of HBC’s previous acceptance that Green Belt release is required to meet its housing target, it is wholly appropriate that land on the edge of Bushey, being one of the most sustainable settlements within the Borough’s settlement hierarchy, should be considered for Green Belt release.

6.137 Paragraph’s 147 and 148 of the NPPF state:

“147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

148. 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.”

6.138 I accept that the development represents inappropriate development in the Green Belt which should only be approved under the circumstances set out in paragraph 148 above.

6.139 It is my view that the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by the benefits such that very special circumstances are demonstrated. This is addressed in further detail at Section 9 of my Evidence. I also highlight that this planning balance exercise is not proposed to be amended by NPPF (2022).

6.140 The first sentence of Paragraph 167 states that when determining applications, local authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment. Footnote 50 of the NPPF advises that a site-specific flood risk assessment should be provided for proposals involving sites of 1 hectare or more. It is then stated that “development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that the development of the site will comply with the five criteria as listed below:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

6.141 A site specific Flood Risk Assessment (FRA), proportionate to the stage of the development was submitted with the application. The evidence which Mr Whittingham has produced to address the Development Plan policies also demonstrates compliance with paragraph 167 of the NPPF.

6.142 Paragraph 169 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The Appeal Scheme is accompanied by a site specific Flood Risk assessment and incorporates SUDS. The matters raised in this paragraph are addressed in more detail through the evidence of Mr. Whittingham.

6.143 Paragraphs 179 – 182 relate to, amongst other matters, harm to biodiversity, loss or deterioration of irreplaceable habitats, protection of habitats sites. No objection is raised in respect of ecological / bio-diversity matters and a significant bio-diversity net gain is delivered.

6.144 Section 16 deals with the conservation and enhancement of the historic environment. It is agreed at paragraph 6.39 of the SoCG that there will be no impact on any heritage assets of their setting.

6.145 I conclude that the appeal scheme is in accordance with the relevant sections of the NPPF.

Striking the Balance

6.146 As I have already explained in paragraph 5.19 of my evidence, I consider that as facilitated by Policy SP2 of the Core Strategy, there are clear and compelling other material considerations that direct that planning permission should be granted even if – against my evidence above – the Inspector were to decide that allowing the appeal scheme would conflict with the Development Plan when read as a whole.

7.0 PLANNING CONDITIONS AND OBLIGATIONS

- 7.1 A schedule of agreed planning conditions is has been provided to the Inspector, who in turn has provided comments and an updated schedule is submitted alongside both parties evidence.
- 7.2 A final copy of the legal agreement will be signed and passed to the Inspector in accordance with a timetable to be agreed. The agreed Heads of Terms for the legal agreement are set out below and are subject to final agreement between the Appellant, Hertsmere Borough Council and Hertfordshire County Council.
- 7.3 Provision of 40% affordable housing (including First Homes) – excluding Self Build / Custom Build homes. Proposed tenure split of:
70% affordable rent and social rented (75% affordable rent and 25% social rent)
25% first homes
5% intermediate housing
- 7.4 Provision of 5% of the open market housing as self build / custom build
- 7.5 Open Space – provision of an open space scheme including typology / location / programme for delivery.
- 7.6 Mobility and Community Hub – identified as a building containing:
- Café;
 - Reading area;
 - Shared office space;
 - Parcel drop off and collection;
 - Bike stop,
 - Information on car sharing, walking, cycling and local public transport; and
 - Electric vehicle charging points and cycle parking;
- 7.7 Healthcare Contribution
- 7.8 Bus Service Contribution
- 7.9 Personalised Travel Planning Service and Contribution
- 7.10 Cycle and Walking Routes Contribution
- 7.11 Off-site Schools Travel Plans Contribution

- 7.12 Land for Primary School (or possible other form of SEND to be agreed with HCC Education as set out below).
- 7.13 Government statistics suggest that in 2022 4% of children in the UK have an Education, Health and Care ("EHC") plan/Statement of SEN (up from 3.7% in 2021). They also state that 12.6% of the UK's school age child population has some form SEND but no EHC plan. Nationally, there is insufficient SEN provision to accommodate the demand, which is growing year on year.
- 7.14 It is understood that in Hertfordshire, the SEND Special School Place Planning Strategy 2020-2023 identifies a significant shortfall in places in the Severe Learning Difficulty (SLD) school and Profound Neurological Impairment (PNI) sectors with the forecast showing a rise by 364 places between January 2020 and January 2025. It is a priority of the Strategy to mitigate this increase by creating up to 300 new SLD places to meet demand now and into the future. The forecast shows that 75% of the overall increase in demand across the life of the forecast is for SLD and PNI places.
- 7.15 It is unclear as to how HCC will accommodate the need for these additional places, of which there is a significant shortfall. The Appellants are therefore willing to consider whether, in conjunction with HCC the development site should offer a more flexible form of education provision beyond a primary school. It is the Appellants understanding that the school site as identified on the parameters plan is of sufficient size to accommodate specialist SEND provision if required.
- 7.16 In the event that it is HCC's preference to accommodate a SEND school on the Appeal Site (which remains within the same Use Class) then the weight to be afforded to this provision in the planning balance (in Section 9) would be substantial due to the current level of need which is not being provided for. However for the purpose of the exercise I have currently conducted, I have assumed it will be a primary school.

8.0 THIRD PARTY SUBMISSIONS

- 8.1 With regard to the 3rd party submissions, a summary of the matters raised and responses to those issues is contained at my **Appendix 3**.
- 8.2 The Appellants, as agreed at the Case Management Conference, will make their highways and ecological consultants available for the Inquiry to address any questions from residents in this regard.

9.0 PLANNING BALANCE

- 9.1 I acknowledge that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open (Framework Para 137). Inappropriate development is, by definition harmful, and will only be allowed when the potential harm to the Green Belt by inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations such as to give rise to very special circumstances: paragraph 148 of the Framework. I also note that this balancing exercise is brought into the statutory development plan by Policy SP2(b) of the Core Strategy.
- 9.2 In effect, in a case like this, whether the scheme's benefits clearly outweigh its harms is the determinative test for judging both (i) accordance with the statutory development plan, and also (ii) the NPPF, both when read as a whole.
- 9.3 I conduct my planning balance below.

HARMS

- 9.4 Any harm to the Green Belt, including definitional harm and harm to openness and purposes, must attract substantial weight in the planning balance.

Purposes

- 9.5 Mr Clark's evidence concludes the following in terms of the contribution of the site to the purposes of the Green Belt:
- Purpose 1 – no contribution to Purpose 1 identified and therefore no harm identified.
 - Purpose 2 - limited contribution to purpose 2 of the Green Belt noting that whilst the Appeal Scheme would extend into open land from Little Bushey Lane to the east it would not extend further east than existing development in the immediate vicinity; and much less far towards Elstree than the extent of parcel SA-57 and existing development in Bushey Heath. Resulting in very limited harm being identified.
 - Purpose 3 – the site makes a limited contribution towards this purpose. Harm would be limited - whilst inevitably there would be encroachment into open land within the Appeal Site, this would not unduly undermine the already limited contribution the Appeal Site makes to the Green Belt. Only just over half of the Appeal Site (approximately 57%) would be developed and a substantial belt of open landscape would be preserved between the edge of development and the M1 corridor, just as it is already to the north-east of Rossway Drive. There would be no further urbanising

influence over the wider landscape, from which the Appeal Site is strongly separated by significant structural features.

- Purpose 4 – no contribution and no harm
- Purpose 5 – Mr Clark's consideration of contributions to the Green Belt reflects the methodology set out in his **Appendix PC-2**, which also notes that the contribution to Purpose 5 is not assessed, just as it is not in the Council's evidence base.

Openness

- 9.6 I adopt the conclusions of Mr Clark in this respect . He concludes that in addition to the purposes of the Green Belt, an essential characteristic of the Green Belt as set out in NPPF paragraph 137, is its openness. Openness can be considered by definition (absence of built development in principle); spatially/volumetrically (how much openness is taken up by built development); or in terms of a visual aspect (how the openness or its loss is perceived visually).
- 9.7 In terms of harm to this characteristic, inevitably, there would be some harm from the Proposed Development **by definition**, as a result of the loss of openness of part of the existing Appeal Site, to built form.
- 9.8 However Mr Clark concludes, and I concur, that **spatially** this constitutes only 10.4ha, or 57% of the Appeal Site, to be occupied by built form or infrastructure; and only 18% of the parcel SA-57. In terms of quantity of land, the Council's Green Belt Stage 2 report recommends on p.101 that SA-57 be considered for removal from the Green Belt in combination with SA-54 (land to the north of SA-57 including development at Rossway Drive), as RS-3, which would form a significantly larger area than SA-57 alone.
- 9.9 Both Mr Clark's appraisal and the Council's Green Belt Assessment Stage 2 report (**CD G8**) set out, the openness of the Appeal Site is in the context of significant urbanising features surrounding and traversing the Appeal Site, resulting in a limited sense of countryside, to the point that the Stage 2 report describes a '**semi-urban character**'.
- 9.10 Mr Clark concludes that the principal receptors of harm to visual openness would be users of the PROW through the Appeal Site, notably PROW 040. The route of this PROW would be retained through the Proposed Development and would therefore be changed from a visually open experience to one largely enclosed by built form along that part of the route extending through the area of built development. However, consideration has been given in the design process to maintaining a perception of visual openness along this route.

- 9.11 As shown in the Access concept plan on p.31 of the DAS (**CD B5**) and in the revised parameters and illustrative masterplan (February 2023) (**CD D3**), the PROW corridor is relatively straight, enabling views to be retained along the corridor between areas of built form, towards the structural landscape to the east, as well as in lateral views along the retained and reinforced green/blue corridor crossing the centre of the Appeal Site. As shown in **Image PC-3** of Mr Clark's evidence, by way of secondary mitigation, the PROW corridor would be punctuated by a series of open spaces, each providing a degree of visual openness in themselves, as well as a sense of visual and physical progression to the landscape beyond the development edge.
- 9.12 Finally, as shown in the Ordering Principles concept on p.30 of the DAS, views to the wider landscape would be obtained along the northern boundary of the Appeal Site, towards Hilfield Castle; along the central hedgerow corridor, towards the stream corridor to the north-east; and across the wider natural open space in the eastern area of the Appeal Site. This series of design features would provide some mitigation of the loss of visual openness experienced from the PROW route.
- 9.13 Accounting for this range of considerations Mr Clark considers that overall **harm to the openness characteristic** of the Green Belt would be localised in extent and partly mitigated through a sensitive design approach.

Landscape Character

- 9.14 Mr Clark has also identified a very limited and localised harm to landscape character and the visual impact of the development of a greenfield site.

Development outside built up area

- 9.15 Whilst there is limited conflict with Policies SP1 and CS1 in that the scheme is proposing development in the Green Belt and outside of the built up area, I afford this conflict only limited weight for the reasons which I have already explained in relation to the out of date housing policies / boundaries.
- 9.16 I therefore summarise the harms in Table 4 overleaf.

Table 4

Harms	Weight
Harm to the Green Belt	Substantial
Visual effects of development	Moderate
Localised and limited harm to landscape character	Limited
Development outside of built up area	Limited

BENEFITS

- 9.17 With regard to the benefits of development, whilst I am aware that some of them can be classed as 'mitigation', I do not consider that this means that they cannot also count as a benefit.

Market Housing

- 9.18 The Council's Local Plan review is significantly behind the envisaged timetable such that the current housing policies are now out of date and do not meet current housing need. As such there is no plan led way of meeting housing need.
- 9.19 Development of the Appeal site for residential use would contribute towards the Council's shortfall in the five year supply of housing land in the face of a chronic shortfall.
- 9.20 I have dealt with the need for market housing in the previous section and given the acute level of need, I consider this should be afforded nothing less than very substantial weight.

Affordable Housing

- 9.21 The Appeal Scheme will deliver a high-quality development of 310 new homes including 40% affordable housing, which is a very substantial benefit given the acute affordable housing need and the shortfall in market housing in the time of a national housing crisis. The evidence produced by Mr Stacey shows that nothing less than very substantial weight should be afforded to the provision of affordable housing.

Self-Build / Custom Build

- 9.22 The evidence produced by Mr Moger show a need for this form of housing which is not currently being met in the Borough and for which substantial weight should be afforded.

Land for Primary School

- 9.23 The Appeal Site adjoins the existing built up area of Bushey which is a tier II settlement. It is therefore reasonable to expect growth to continue to occur in Bushey. The Appeal Scheme will deliver land sufficient for a 2FE primary school which will meet future need in Bushey as confirmed by the evidence base supporting the Local Plan review. It is the Council's view that this attracts moderate weight in the planning balance however I afford it significant weight.

Economic Benefits

- 9.24 In the current economic climate, significant weight should be afforded to both economic and retail benefits in accordance with paragraph 81 of the NPPF. An Economic Benefits Statement (EBS) is enclosed at **Appendix 2** which sets out the direct and indirect economic benefits including:

- Supporting construction jobs directly related to the development.
- Supporting jobs indirectly related to the development.
- The provision of up to 310 new homes will generate additional convenience, comparison and leisure services expenditure in the local economy.

Bio-Diversity Net Gain

- 9.25 The Appeal Scheme includes the enhancement of biodiversity including the areas of planting and landscaping across the Site. The Appeal Scheme can deliver a net biodiversity gain - 20.33% habitat units, 39.42% hedgerow units and 12.41% river units. I afford this significant weight in the planning balance.

Sustainable Transport Improvements

- 9.26 A comprehensive package of sustainable transport measures will be delivered, improving sustainable transport options for a much wider section of the population; which will also feed into wider Council climate change objectives. I afford this significant weight in the planning balance.

Design

- 9.27 It is agreed in the Statement of Common Ground (paragraph 6.24) that a design code condition will be used to secure a high quality design at the reserved matters stage. In accordance with paragraph 134 of the NPPF, I afford this significant weight in the planning balance.

Community Facility / Mobility Hub

- 9.28 The Appeal Scheme will deliver a mobility hub which is a permanent location where information on sustainable travel can be readily accessed. The Mobility Hub shall offer as a minimum: electric vehicle charging facilities, a bike stop, information on car sharing, walking, cycling and local public transport and a parcel drop off and collection. However other Class E uses can also be accommodated within the site to ensure that this is a community facility available for use by both existing and future residents. It is agreed that this attracts moderate weight in the planning balance

Open Space

- 9.29 The Appeal Scheme incorporates a significant area of open space close to an existing PROW within easy access of the new homes and will encourage the development of healthy communities as well as ensuring positive linkages with the existing community in Bushey. These facilities would provide significant benefits to both new residents and the existing community. The Appeal Site is in an accessible location with connections to pedestrian routes, which linking to key services and facilities in Bushey. It is agreed that this attracts moderate weight in the planning balance.

Enhanced Access to the Countryside.

- 9.30 The Appeal Scheme provides open and readily passable access to, across and around this land, rather than solely walking along the confined route of PROW which can be difficult to pass in wet conditions. Further opportunities to reach this area of open space are provided along other green and blue infrastructure routes through the built development. I afford this moderate weight in the planning balance.

Enrichment of Blue / Green Infrastructure

- 9.31 As part of Green and Blue Infrastructure totalling approximately 7.84ha or approximately 43% of the Appeal Site, the Proposed Development offers the potential for enrichment of green and blue infrastructure at the urban edge, notably in the form of a more structurally varied, visually interesting and locally distinctive riparian corridor which would remain within the Green Belt. This is a notable enhancement in the context of the existing 'stark' edges or residential development identified in published character assessments. I afford this moderate weight.

Sustainable Building Measures

- 9.32 Sustainability benefits such as EV charging infrastructure, the provision of highly efficient homes with specifications above current Building Regulations for insulation detailing and the heating of properties via highly efficient air source heat pumps which may be

complemented with the addition of PV panels on suitable properties. I afford this moderate weight.

9.33 Table 5 below identified the benefits of the Appeal Scheme.

Table 5

Benefit	Weight
Delivery of up to 310 new homes	Very substantial
Delivery of 40% affordable housing	Very substantial
Delivery of 5% self-build / custom build	Substantial
Land for a primary school	Significant weight
Economic benefits	Significant weight
Bio-diversity net gain	Significant weight
Enhanced public transport offer	Significant weight
Footway / cycleway improvements	Significant weight
Ability to deliver high quality design	Significant weight
Community / Mobility Hub	Moderate weight
Significant accessible Open Space	Moderate weight
Enhanced access to the countryside	Moderate weight
Enrichment of blue / green infrastructure	Moderate weight
Sustainable building measures	Moderate weight

9.34 Having conducted the planning balance, I conclude that in compliance with paragraph 148 of the NPPF (and thus Policy SP2 of the Core Strategy) that the harm to the Green Belt by

way of openness by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such that very special circumstances are demonstrated.

10.0 SUMMARY AND CONCLUSIONS

- 10.1 For reasons which I set in Section 5 of my evidence, it is my view that the Appeal Scheme complies with the Development Plan read as a whole. Whilst I accept that there is harm by definition due to inappropriate development, it is my view that the potential harm to the Green Belt by reason of inappropriateness, and other limited harm arising from the proposal, is clearly outweighed by other benefits such that very special circumstances are demonstrated. This 'balance' of harms against benefits is facilitated by Policy SP2 of the Development Plan and thus I am able to draw a positive conclusion on compliance with the Development Plan. It is my opinion that the benefits clearly outweigh the significant harm such that very special circumstances are demonstrated.
- 10.2 It is not necessary to then separately apply the tilted balance under Policy 11d(ii) given that in reaching the conclusion under paragraphs 147 / 148 of the NPPF, an assessment of benefits against harm has already been undertaken.
- 10.3 There is a clear shortfall in the five year supply, which is an important material consideration weighing in favour of the proposal. There is an urgent and acute need for new homes in Hertsmere Borough and there is no plan led way in which this is to be provided. The latest LDS does not show a plan to be adopted until at least 2 years time. Whilst there is some disagreement between myself and the Council on the weight to be afforded to the provision of market and affordable housing in particular, it is telling that the Council attach significant weight to each of these which is indicative of the acute need for market and affordable housing.
- 10.4 The Council carried out a thorough and comprehensive review of brownfield opportunities and this produced nowhere near the level of housing required to meet need. It is therefore only through the release of site such as the Appeal site that much needed housing will be delivered.
- 10.5 To summarise, the proposal would result in a number of benefits:
- The delivery of housing to contribute towards achieving and maintaining a 5-year supply. This is a very significant benefit that should attract very substantial weight in the decision-making process given the district's unmet housing needs and the delayed local plan review. Given the Government's and NPPF's objective to boost significantly the supply of housing, the benefits associated with the delivery of open market housing in a sustainable location such as the Appeal Site should weigh heavily in favour of the grant of planning permission.

- The delivery of affordable housing to help meet district-wide levels of currently unmet and identified future needs as confirmed in the evidence Mr. Stacey, which should attract very substantial weight in the decision-making process.
- The provision of self build / custom building which should attract substantial weight.
- The provision of land for a new primary school to meet future needs.
- The provision of land for a mobility hub to assist in delivering wider sustainability benefits.
- The delivery of a package of sustainable travel and transport measures.
- The appeal proposal would be in general conformity with the spatial strategy of the Development Plan which seeks directs development towards the larger settlements, of which Bushey is one.

- 10.6 I have attributed the economic benefits associated with the development of high-quality new housing significant weight including: i) the creation of jobs in construction and the supply chain; ii) economic and retail expenditure iii) increased household spending in the local area; and, iv) the provision of New Homes Bonus and increased Council tax revenues.
- 10.7 The delivery of land for a new school; high-quality open space; the delivery of bio-diversity net gain; substantial investment into sustainable transport and the ability secure high quality design should also all attract significant weight.
- 10.8 I conclude that the benefits the Appeal Scheme will deliver are very substantial and the need for the scheme is compelling. In the event, that any conflict is identified with the Development Plan, there are clear material considerations which indicate that planning permission should be granted.

APPENDIX 1
EVIDENCE OF MR PATTERSON-NEILD DEALING WITH
FIVE YEAR HOUSING LAND SUPPLY

APPENDIX 2
ECONOMIC BENEFITS STATEMENT

APPENDIX 3
RESPONSES TO THIRD PART COMMENTS