

IN THE MATTER OF:
LAND EAST OF OXHEY LANE, CARPENDERS PARK, WATFORD,
WD19 5RJ

OPINION

I. INTRODUCTION

1. I am instructed by Boyer Planning (“**Boyer**”) on behalf of Burlington Developments London Limited (“**Burlington**”) in relation to Burlington’s current outline planning application (“**the Application**”) for development at Land East of Oxhey Lane, Carpenders Park, Watford, WD19 5RJ (“**the Site**”).
2. The local planning authority is Three Rivers District Council (“**the Council**”).
3. The Application was submitted in May 2025 and validated under the reference 25/1020/OUT. The description of development (“**the Development**”) is:

“Outline planning application for up to 256 homes (C3 use class)(including affordable and self/custom build housing), housing with care (C2 use class), a children’s home (for looked after children)(C2 use class) together with associated access (including off-site highway works), parking, open space and landscaping (appearance, layout, landscaping and scale as reserved matters)”
4. The case for the Application was put on the primary basis that the Site is Grey Belt, as defined in the December 2024 National Planning Policy Framework (“**NPPF**”), and that the Development therefore falls within the exceptions to “*inappropriate development*” in the Green Belt by virtue of NPPF para. 155 (the Golden Rules in para. 156 being satisfied); and on the secondary basis that “*very special circumstances*” exist to justify the

development under NPPF para. 153 even if it were considered to be “*inappropriate development*”.

5. I have been provided with the Green Belt Assessment (March 2025) by Pegasus Group and the Planning Statement (May 2025) by Boyer, which set out this analysis. The Pegasus Green Belt Assessment examines the contribution that *the Site* makes to Green Belt purposes; this contrasts with the Council’s earlier Green Belt Assessments which does not consider the site on its own but assesses a much wider parcel of which the site forms part.
6. The Site was included as a potential allocation in the Council’s Regulation 18 consultation on a new local plan in July 2025. It was placed in the category of sites with “Some Concerns”, which may be taken forward if issues arising from the initial assessments are resolved. Boyer submitted a response to that consultation on behalf of Burlington in August 2025.
7. The Regulation 19 draft plan is scheduled for consultation in early 2026 ahead of expected submission for examination by the end of 2026.
8. As part of the Local Plan process, the Council has updated its Green Belt Assessment, which (according to the minutes of its 9th September 2025 Local Plans Committee meeting) - is expected to be publicly available in early October. I am instructed that it is anticipated, whilst this assessment will consider Grey Belt matters, it will assess the same wider parcels of land as previous iterations have done rather than on a site-by-site basis.
9. The land immediately to the north of the Site is owned by the Hertfordshire County Council (“HCC”) who have the intention to deliver a new secondary school at the site. Earlier iterations of the draft Local Plan proposed the allocation of this land for educational use.

10. Following submission of the planning application, Boyer and Burlington have met regularly with the case office for the Application, Matthew Roberts. By email dated 19th September, Mr Roberts out his preliminary view that the Site contributed strongly to Green Belt Purpose (a), and is therefore not Grey Belt. He did not provide any commentary in respect to Green Belt Purposes (b) or (d) which Boyer take to mean that he does not consider the site contributes strongly against these purposes. Mr Roberts indicated in the email that he remains open to considering further information from Boyer and Burlington on this matter.
11. I am asked seven questions in the light of this. I set these out, and my answers to them, in Section III below.

II. RELEVANT PROVISIONS OF THE NPPF AND PLANNING PRACTICE GUIDANCE ("PPG")

12. NPPF para. 153 provides:

"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness⁵⁵. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. '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."

13. Footnote 55 states: *"Other than in the case of development on previously developed land or grey belt land, where development is not inappropriate."*

14. NPPF para. 155 provides¹:

"The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where all the following apply:

¹ I have omitted the footnotes to para. 155 as nothing controversial turns on them in the present case.

- a. *The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*
- b. *There is a demonstrable unmet need for the type of development proposed;*
- c. *The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework*
- d. *Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below."*

15. The only apparent point of potential controversy in the present case is relation to the para. 155 criteria is the first part of criterion (a) and whether the Development "*would utilise grey belt land.*"

16. The NPPF Glossary contains the following definition of "Grey Belt":

"Grey belt: For the purposes of plan-making and decision-making, 'grey belt' is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.

17. The relevant Green Belt purposes in NPPF para. 143 are:

- "a) to check the unrestricted sprawl of large built-up areas;*
- b) to prevent neighbouring towns merging into one another;*
- d) to preserve the setting and special character of historic towns.!*

18. The only apparent point of potential controversy in the present case, in relation to whether the Site is Grey Belt, is whether it "*strongly contributes*" to Green Belt Purpose (a), namely "*to check the unrestricted sprawl of large built-up areas*".

19. Guidance on this question is set out in the February 2025 PPG, para. 64-005 of which provides:

“How should the contribution land makes to the relevant Green Belt purposes be assessed?”

When making judgements as to whether land is grey belt, authorities should consider the contribution that assessment areas make to Green Belt purposes a, b, and d. Considerations for informing these judgements are set out below:

Purpose A – to check the unrestricted sprawl of large built up areas

This purpose relates to the sprawl of large built up areas. Villages should not be considered large built up areas.

<i>Contribution</i>	<i>Illustrative features</i>
<i>Strong</i>	<p><i>Assessment areas that contribute strongly are likely to be free of existing development, and lack physical feature(s) in reasonable proximity that could restrict and contain development.</i></p> <p><i>They are also likely to include all of the following features:</i></p> <ul style="list-style-type: none"><i>- be adjacent or near to a large built up area</i><i>- if developed, result in an incongruous pattern of development (such as an extended “finger” of development into the Green Belt)</i>
<i>Moderate</i>	<p><i>Assessment areas that contribute moderately are likely to be adjacent or near to a large built up area, but include one or more features that weaken the land’s contribution to this purpose a, such as (but not limited to):</i></p> <ul style="list-style-type: none"><i>- having physical feature(s) in reasonable proximity that could restrict and contain development</i><i>- be partially enclosed by existing development, such that new development would not result in an incongruous pattern of development</i><i>- contain existing development</i><i>- being subject to other urbanising influences</i>
<i>Weak or None</i>	<p><i>Assessment areas that make only a weak or no contribution are likely to include those that:</i></p> <ul style="list-style-type: none"><i>- are not adjacent to or near to a large built up area</i><i>- are adjacent to or near to a large built up area, but containing or being largely enclosed by significant existing development”</i>

III. THE QUESTIONS POSED IN MY INSTRUCTIONS, AND MY ANSWERS

Q1. In respect of purpose (a) and having regard to PPG guidance, does Counsel consider that the existing Care Home, Woodland Trust land and proximity to the urban area of Carpenders Park are relevant factors in assessing the level of contribution the Site makes to this purpose?

20. Yes. The are substantial and permanent² features would have the effect of partially enclosing and containing prospective development, so that it would not be incongruous. There are also urbanising influences. See in particular paragraphs 3.6-3.8 of the Pegasus Green Belt Assessment.

21. It is clear from the PPG guidance on the difference between a “*Strong*” and a “*Moderate*” contribution to Green Belt Purpose (a) that these are relevant factors in considering the level of contribution the Site makes to this Purpose. It would not be reasonable for the Council to take a different approach, as the PPG is unambiguous in this respect.

Q2. In Counsel’s view, and having regard to any relevant case law, do these factors alone contribute to the site making a ‘moderate’ contribution to this purpose? It is noted that the list referred to in the PPG of factors that weaken land’s contribution to purpose (a) is not exhaustive. In Counsel’s view is the fact that the southern boundary of the site borders an area of Flood Zone 2/3 a relevant consideration in this regard? If so, is this factor of equal relevance as those specifically listed in reaching a view on the matter? In a similar vein, to what degree is the fact that the site to the north is owned by County with intentions to develop a new secondary school relevant? Are there any other relevant factors that should be considered in reaching a view on the Site’s contribution to purpose (a)?

² It is to be noted in this context that the Woodland Trust’s ownership and management protects woodland through direct control and long-term stewardship (for example, the current management plan for Merry Hill Wood includes long term objectives for 50+ years).

22. It is important to note that the PPG indicates that an edge-of-settlement site is likely to make a “Moderate” rather than “Strong” contribution to the Green Belt where it includes “*one or more features that weaken the land’s contribution to this purpose*” (my emphasis). The list that follows is expressly non-exhaustive.
23. Accordingly, just one such feature can mean a site’s contribution to Green Belt Purpose (a) is “Moderate” rather than “Strong” .
24. It is also clear from the language used in the PPG that features in question can be natural or man-made; and that they do not need to be present on all sides of the site (“largely enclosed” is one of the factors that the PPG suggests points towards a “Weak” contribution – it therefore cannot tenably be treated as a requirement for a “Moderate” as opposed to “Strong” contribution).
25. In the present case, there are multiple such factors.
26. The existing physical and topographical features that would have the effect of partially enclosing and containing development, and the existing urbanising features, are the most important considerations in this context.
27. The features outlined in Q1 above and my corresponding answer clearly fall within this description.
28. The flood zone 2-3 area is also of relevance, because it is a factor which in practice is likely to operate as a defensible boundary against future sprawl to the south. My attention has also been drawn to the Hartsbourne Stream Flood Storage Area (“FSA”) which overlaps with this area – and I have been provided with photographs of this. This is a significant engineering operation and a permanent intervention in the landscape (with, I am told, a design life of 200 years). As such it is a further urbanising influence. It is inconceivable that the FSA would ever

be developed, which reinforces the view that there is a defensible boundary to the south. As such the flood zone 2-3 area, including the FSA can and should be treated as within the description of “*physical feature(s) in reasonable proximity [of the Site] that could restrict and contain development*” within the meaning of the second bullet of the PPG guidance on what amounts to a “*Moderate*” contribution to Green Belt Purpose (a).

29. I do not consider that HCC’s plans for future development of their site for education is of relevance in relation to the Site’s *existing* contribution to Green Belt Purpose (a).

30. Overall, there are multiple significant factors which fall within what the PPG envisages are features that “*weaken the land’s contribution to this purpose*”. Given that only one such factor can be sufficient to mean that a site’s contribution is no more than “*Moderate*”, the presence of multiple factors here supports the conclusion that this is a strong, rather than borderline, case for concluding that the contribution to Green Belt Purpose (a) is no more than “*Moderate*”.

Q3. In respect of purpose (b), does Counsel agreed with the conclusions reached by Pegasus in their Green Belt Assessment (paras 3.9-3.15)?

31. Yes. The analysis of the Pegasus Green Belt Assessment in respect of Green Belt Purpose (b) is cogently argued and in accordance with the PPG. I have seen no evidential basis for disputing it.

Q4. In respect to both purposes (a) and (b), is Counsel aware of any subsequent case law that has occurred since the Pegasus Green Belt Assessment was completed (in March 2025) that should be taken into account when forming a view on the level of contribution the site makes to these purposes?

32. I am not aware of any Inspectorate or Secretary of State appeal decisions which set out general principles (as opposed to case-specific findings) that extend beyond the guidance in the PPG. The relevant provisions have yet to be considered in any judgment of the High Court.

Q5. Irrespective of the above in the event that the proposals are considered to represent inappropriate development in the Green Belt, what are Counsel views on the strength of the 'Very Special Circumstances' case put forward (as set out at paras 6.45-6.83 of our Planning Statement)? On the basis that the Golden Rules are met, does this attract significant weight in favour of the proposed development, separate from any other benefit?

33. The combination of factors set out at paragraphs 6.45-6.83 – in the context of the chronic market and affordable housing supply shortfall, the out-of-datedness of the existing local plan, and the still-early stage of the new local plan process, together with the considerable public interest needs that the C2 elements of the scheme would serve – are unquestionably capable of lawfully being treated as very special circumstances for the purposes of NPPF para. 153 (if that provision is applicable). The range and importance of these factors is *at least* equivalent to the package of benefits which Inspector Matthew Nunn recently found to generate “*very special circumstances*” in relation to Burlington’s proposed development at Sarratt, also in the Council’s administrative area, following a public inquiry in late 2023 (APP/P1940/W/22/3311477&3311479, decision dated 3rd May 2024).

Q6. In Counsel’s view, do Very Special Circumstances exist in this case?

34. Although this is ultimately a question of planning judgment rather than a question of law, based upon the material I have been provided with, and having regard to the considerations outlined in response to Q6 above, I consider that the Council:

- (a) can lawfully grant planning permission on the basis that very special circumstances exist; and
- (b) would struggle to defend a refusal of planning permission on the basis that very special circumstances do not exist.

IV. CONCLUSION

35. I have nothing to add as currently instructed but would be happy to answer any further questions arising out of the above advice, if and when required.



LORD BANNER K.C.

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24th September 2025