

**TOWN AND COUNTRY PLANNING ACT 1990  
SECTION 77 CALL-IN**

**BURLINGTON DEVELOPMENTS LONDON LTD**

**LAND EAST OF OXHEY LANE, CARPENDERS PARK**

**PROPOSAL**

*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).*

**PINS REF.: APP/P1940/V/26/3378268**

**LPA REF.: 25/1020/OUT**

**PLANNING STATEMENT OF COMMON GROUND  
AGREED BETWEEN THE APPLICANT  
AND THREE RIVERS DISTRICT COUNCIL**

**MAY 2026**

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## 1. INTRODUCTION

1.1 This Statement of Common Ground has been prepared on behalf of Burlington Developments London Ltd (the 'Applicant') and the Council in support of the called in application for outline consent for the development at Land East of Oxhey Lane, Carpenders Park (the 'Site').

1.2 The application was submitted to Three Rivers District Council ('TRDC', the 'Council') and was validated on 25<sup>th</sup> June 2025 with the following description of development (application ref: 25/1020/OUT).

*"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)."*

1.3 The application was recommended for approval by officers, as set out in the officers report to Committee. This confirmed that officers considered the Site to be Grey Belt, and if members were to come to a different view it was also found that Very Special Circumstances exist.

1.4 The application was presented to the Council's Planning Committee on 19<sup>th</sup> March 2026. Despite the positive recommendation, members resolved to refuse planning permission. Prior to a decision being issued the application was called-in by the Secretary of State and therefore a decision was not formally made by TRDC. Notwithstanding this, the published minutes of the 19 March Planning Committee indicate that the proposed reasons for refusal would have been:

*"1) It would constitute inappropriate development in the Green Belt, harm openness, and conflict with purpose (a) and (c) of the Green Belt. Very special circumstances would not exist to outweigh the harm to the Green Belt and any other harm identified; and*

*2) In the absence of a S106 agreement, failure to secure infrastructure contributions."*

1.5 This Statement of Common Ground covers all planning matters associated with the proposal. Separate Statements of Common Ground has been prepared to cover landscape and highways matters.

### **Planning Application Documentation**

1.6 The drawings, documents and supplementary letters that formed the basis of the Council's assessment of the planning application are set out within [Appendix 1](#).

1.7 A list of relevant development plan policies is contained within [Appendix 2](#).

## **2. THE SITE**

- 2.1 The Site, which totals approximately 12.7 ha, is situated immediately to the east of Oxhey Lane (A4008). The Site falls outside of the existing defined urban area of Carpenders Park, which is a suburb of Watford, within Three Rivers District. The Site is wholly within the Green Belt.
- 2.2 The Site comprises open grassland fields. The topography of the Site varies, with the northern field rising from west to east. The remaining fields have a more gentle slope from north to south. There are trees along the northern, eastern and western boundaries, as well as two belts of hedgerow across the Site. The Site is subject to a provisional Tree Protection Order (TPO) (no. 937) which relates to trees along the northern and eastern boundaries, and close to the boundary with the care home.
- 2.3 The Site surrounds a substantial modern care home which has recently been constructed on a previously developed site to the east of Oxhey Lane (Carpenders Park Care Home), following permission being granted in 2017 to replace the former buildings. (ref: 17/1010/FUL). There is a telecommunication mast between the Site and the care home. The western boundary of the Site comprises the A4008 whilst the Merry Hill Wood (owned by the Woodland Trust) borders the Site to the east. The eastern edge also forms the administrative boundary between Three Rivers and Hertsmere (the Site is solely within Three Rivers). A stream and associated flood zone are located beyond the Site's southern boundary, whilst to the north it borders land owned by Hertfordshire County Council (HCC) which is identified as a proposed allocation for a new secondary school in the emerging Local Plan (ref: CFS11).
- 2.4 There is one Public Right of Way, footpath ref 'Watford Rural 013' which passes broadly east to west through the northern section of the Site into Hertsmere District, through Merry Hill Wood. The remainder of the Site is not publicly accessible.
- 2.5 The Site does not contain any statutorily or locally listed structures. The closest heritage assets are three Grade II listed buildings and structures further to the south on Oxhey Lane (opposite Grims Dyke Golf Club), Grim's Ditch (a Scheduled Monument) and Grims Dyke (a Grade II listed park and garden). The closest of these is approx. 700m (at the closest point). Additionally, Carpenders Park has no conservation area, and the closest is the 'Brookshill Drive and Grimsdyke Estate' Conservation Area within Harrow, approximately 900m to the southeast.
- 2.6 The majority of the Site lies within Flood Zone 1 (low probability of flooding), with a slight encroachment of Flood Zone 2 at the south-west corner. No development is proposed in this area. A small area running vertically through the south of the Site is at risk of surface water flooding. Beyond the southern boundary is a river watercourse and the Hartsbourne Flood Storage Area lies to the south.

### **Planning Policy Context**

- 2.7 The Site is not allocated for development within the current development plan which comprises of the Core Strategy (2011), Development Management Policies Local Development Document (2013) and Site Allocations Local Development Document (2014). The

development plan predates the publication of the current iteration of the NPPF (December 2024).

- 2.8 The Council is in the process of preparing its new Local Plan.
- 2.9 In 2021, the Council published a Regulation 18 draft of its Local Plan which proposed allocation of the Site for 485 new homes (ref: CFS69a). In 2023, the Council decided to reduce the extent of Green Belt release proposed in the 2021 version of the draft Local Plan. A revised Regulation 18 draft Local Plan was published in October 2023 which removed many of the potential Green Belt allocations, including the Site.
- 2.10 In a report to the Council's Local Plan Sub-Committee on 25 November 2025, planning officers recommended that the Site be included as a proposed allocation within the forthcoming Regulation 19 version of Local Plan for 381 new homes (ref: NCFS12). Notwithstanding this, Members at this Meeting voted to remove this Site (along with 5 others) from the list of proposed allocations.
- 2.11 In the Full Council meeting on 27 January 2026, the Committee Report indicated that the Regulation 19 draft of the Local Plan would meet only 56% of the overall housing requirement for the District derived from the standard method. Officers noted concern that a plan falling over 5,000 dwellings short of its standard method would be found unsound at examination, resulting in the plan being rejected by the Secretary of State. Members voted to proceed with the Regulation 19 Consultation.
- 2.12 On 5 February 2026, the Secretary of State for Housing and Planning wrote to the Council highlighting his concerns with the approach of the emerging Local Plan and the lack of confidence that such an approach was capable of being found sound or legally compliant at examination.
- 2.13 On 18 March 2026, the Secretary of State wrote again to the Council directing the Council to include the Site (and the 5 others previously discounted) as a proposed allocation within the Regulation 19 draft Local Plan. The SoS also directed the Council to commence consultation on the Regulation 19 Local Plan by 31 July 2026 and that it be submitted for examination by 30 November 2026.
- 2.14 The Council wrote to the Secretary of State on 26 March 2026 to justify the position taken and explain why the relevant sites were excluded from the Regulation 19 Local Plan.
- 2.15 The Secretary of State responded on 15 April to advise that exceptional circumstances were not considered to exist which would justify the withdrawal or modification of the relevant directions. The Secretary of State confirmed: *"I am firmly of the view that the additional sites specified in my direction should be included in the Regulation 19 consultation..."*. The Council have been asked to proceed as directed with updating the evidence base and move forward with a direction compliant local plan.
- 2.16 On this basis, it is expected that the Site will be a proposed allocation within the emerging Local Plan.

### **3. THE PROPOSED DEVELOPMENT**

- 3.1 The proposal seeks outline consent for a mixed-use development comprising market, affordable and self/custom build housing (up to 256 homes), housing with care (60 homes), a children's home (for looked after children) together with associated parking, open space, landscaping and vehicular access.
- 3.2 A new primary access is proposed off Oxhey Lane into the northern section of the Site, and two new pedestrian and cycle accesses are proposed (including one emergency vehicle access). The main vehicular access will be via a signalised crossroad junction from Oxhey Lane, opposite Carpenders Avenue. The access is located to the north-western corner of the Site and will extend eastward across the northern section of the Site, then run vertically to the south.
- 3.3 The proposals comprises the following elements:
- Delivery of up to 256 new homes in a range of sizes and tenures.
  - Delivery of up to 128 new affordable homes (50%), of which 70% would be social rent and 30% shared ownership;
  - Of the proposed market housing, 10% would be provided as self/custom build plots (up to 13 homes);
  - Delivery of up to 60 Housing with Care homes (Use Class C2);
  - Provision of a 4-bed children's home (Use Class C2), to be managed by Hertfordshire County Council;
  - Delivery of a total of 6.2Ha of public open space throughout the Site providing a mixture of formal and informal recreational opportunities;
  - On-site and off-site works to encourage active travel and access to the wider countryside; and
  - Provision of economic benefits in relation to construction of the Site and longer-term local spending & jobs.

## 4. AGREED MATTERS

4.1 The following matters are agreed between the Applicant and the Council.

### **The Site**

- 4.2 The Site comprises an undeveloped parcel of land, immediately to the east of Carpenders Park. Carpenders Park is identified as a 'Secondary Centre' in the Council's Settlement hierarchy (3<sup>rd</sup> Tier).
- 4.3 The Core Strategy defines Secondary Centres as providing a more limited range of services and facilities than the Key Centres but are still important in meeting local needs and are generally well located with regard to access to adjoining centres and public transport facilities. The Core Strategy continues by stating that it is appropriate that a proportion of future development should be located within and immediately surrounding the Secondary Centres.
- 4.4 The Site is not currently allocated within the development plan. However, it is expected to be a proposed allocation within the Council's Regulation 19 Local Plan (for 381 new homes).
- 4.5 The Site is within walking distance of Carpenders Park Overground Station which is served by the Lioness Line, providing frequent services to Watford/Central London, with national rail connections beyond. The closest bus stop is on Wood Road, which provides services to Carpenders Park, Watford, Bushey and Harrow.
- 4.6 There are also a range of services and facilities in Carpenders Park within walking distance. These include primary schools and pre-schools, a doctor's surgery, post office, places of worship, South Oxhey Leisure Centre, open spaces and various shops, restaurants and pubs.

### **Development Needs**

- 4.7 The Council is unable to demonstrate a 5 year housing land supply, with the latest published statement (April 2026) identifying that as of 31 March 2025, it was only possible to demonstrate a 1.2 year housing land supply (resulting in a numerical shortfall of 3,808 new homes).
- 4.8 Based on the published Housing Delivery Test (HDT) results the Council has consistently delivered below the target set by the standard method and the Council is subject to the presumption in favour of sustainable development.
- 4.9 The latest Annual Monitoring Report (AMR) covering the period 2023-24 identifies that only 3 affordable homes were completed between 1 April 2023 and 31 March 2024, amounting to 1.1% of the total completions (276) in the same period. 42 affordable homes have been delivered in 2024/25<sup>1</sup>.
- 4.10 Since monitoring began in 2001, 1,268 (gross) affordable homes have been delivered, amounting to 23% of the total housing delivery. This is significantly below the target requirement in Policy CP4 of 45% of all new housing to be affordable, particularly in the last year (11%).

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<sup>1</sup> FOI Request in relation to application ref: 25/2215/OUT

- 4.11 There is an acute need for affordable housing in Three Rivers.
- 4.12 The Adult Social Care strategy, prepared by HCC, identifies an estimated demand for 251 units of market extra care in Three Rivers District by 2030.
- 4.13 The South West Hertfordshire Local Housing Needs Assessment (LHNA) Update (2024) provides two scenarios for specialist older persons housing provision. Based on existing and planned supply in 2022, it advises that the net need for market housing with care to 2041 in Three Rivers ranges between 473 and 693 units.
- 4.14 The Statement of Common Ground between the Applicant and HCC sets out the need for children's homes across Hertfordshire, with a need in Three Rivers for 24 new bedspaces in children's homes up to 2041. This is supported by the South West Hertfordshire Local Housing Need Assessment (LHNA) Update (March 2024).
- 4.15 To date, the Council has not delivered any custom or self-build homes in the District. The Council agree that there is a demand for this type of housing that significantly exceeds supply.
- 4.16 There is a clear and identified unmet need for the proposed housing with care homes, children's home and custom/self-build homes.

#### **Principle of Development**

- 4.17 The Site is located within the Green Belt. There are two potential routes for the proposed development to be acceptable in principle:
- The Site is Grey Belt and the provisions of paragraphs 155 and 156 of the NPPF are satisfied;
  - Very Special Circumstances exist in accordance with paragraph 153 of the NPPF.

#### **Grey Belt**

- 4.18 Guidance contained within the PPG (February 2025 or any subsequent update before the determination of the Application) forms the basis on which an assessment of whether a site meets with the definition of Grey Belt should be undertaken.
- 4.19 On this basis, the Site does not make a strong contribution to Green Belt purposes (b) and (d).
- 4.20 When assessing the Site's contribution against purpose (a), Carpenders Park is a large built-up area.
- 4.21 Neither the NPPF nor the PPG exclude any particular physical features from consideration and thus they could be man-made or natural.
- 4.22 There are various features around the Site:
- Flood Zone and Storage Area – The flood zone 2-3 area to the south, which includes the Hartsbourne Steam Flood Storage Area (FSA). The Hartsbourne Stream FSA is a strategically important flood defence and has been constructed to protect the areas of Carpenders Park and South Oxhey from flooding up to the 1 in 200 year event. The

embankment is 280m in length and 6m high and there are large engineered abutments passing beneath Oxhey Lane;

- Merry Hill Wood – To the east is Merry Hill Wood, a publicly accessible area owned and managed by the Woodland Trust.
- Carpenters Park Care Home – Located to the immediate west of part of the site;
- 5G Telecommunications Mast – Located partially between the Site and Carpenters Park;
- Oxhey Lane and the edge of Carpenters Park – Along the western boundary;
- Tree lined boundaries – Including the northern boundary which contains trees subject to a provisional TPO (ref: 937) and extensive hedgerows.

4.23 Two legal opinions were sought by the Applicant (Lord Banner KC, Keating Chambers) and another was sought by the Council (Dr Alex Williams, Francis Taylor Building). These opinions are appended to the Statement at Appendices 3-5.

4.24 There are no Footnote 7 assets (other than Green Belt) that are applicable to the Site that would represent a strong reason for refusal.

4.25 It is agreed that the following provisions of paragraph 155 of the NPPF are satisfied:

- 155 (b) – For the reasons set out at paragraphs 4.7 – 4.16 there is a demonstrable unmet need for the development proposed.

4.26 In respect of the Golden Rules (required by Paragraph 155 (d), the proposals seek to comply for the following reasons:

- 156 (a) – 50% affordable housing is proposed at the preferred tenure split (70% social rent, 30% shared ownership) which will be secured by way of an appropriate legal agreement. A financial contribution equating to 15% would be provided for the housing with care as opposed to on-site provision, to respond to the requirement of Paragraph 157 of the NPPF.
- 156 (b) – It is considered that necessary improvements in this context is the same as in the context of NPPF paragraph 58(a), which reflects the requirement in CIL Regulation 122, namely necessary provision or contributions to infrastructure to make the impacts of the development acceptable. As such, all necessary financial contributions should be secured by way of an appropriate legal agreement.
- 156 (c) – The development would provide new green spaces, play provision, an area of amenity open space adjacent to the existing Public Right of Way (Watford Rural 013) and a community orchard, complying with this criterion. At present, with the exception from the existing Public Right of Way, there is no public access across the Site; however, the proposed green space provision will be accessible for future residents as well as existing residents.

### Very Special Circumstances

- 4.27 If the proposals are not considered to be Grey Belt, it needs to be considered whether 'very special circumstances' exist sufficient to clearly outweigh the harm caused to the Green Belt and other harm in accordance with the NPPF. 'Very Special Circumstances' will not exist unless the harm to the Green Belt and any other harm resulting from the proposals is clearly outweighed by other considerations.
- 4.28 In respect to harm, the proposals will result in Green Belt harm that is afforded substantial harm (in accordance with paragraph 153 of the NPPF). In addition, the proposals result in landscape harm. The Landscape Statement of Common Ground summarises the position on landscape harm.
- 4.29 The proposal will deliver various benefits. These benefits and the weight attached to each is not agreed however the Council and Applicant are working together to prepare a separate note which sets set out their respective position to assist the Inspector.

### **Technical Matters**

- 4.30 This section sets out the position in respect to the various technical matters, with the exception of landscape matters which are set out within a separate Statement of Common Ground.

### Highways

- 4.31 HCC as Highway Authority (HCCHA) have confirmed that there would not be a severe impact on the operation of the highway network. This is accepted by the Council.
- 4.32 Policy 5(f) of HCC's Local Transport Plan 2018 advises that HCC will only consider new accesses onto primary and main distributor roads where special circumstances can be demonstrated in favour of the proposals. The Highways SoCG sets out HCC's position on this. Officers' view on this, as set out in Paragraph 7.18.6 of the Committee Report was that *"...In this instance a new access on an A road is required to unlock the development. HCC officers have considered that the access and highway impacts do not have a severe impact and that the access can be designed safely and presented conditions and obligations which are to be secured."*
- 4.33 In addition, the proposals include the following measures that will enhance the sustainability of the Site and encourage active travel:
- Improvement works to walking and cycle infrastructure (as shown on the plans in the Highways SoCG);
  - A total contribution of £613,558.69 towards bus service improvements over a five year period.
  - A total contribution of £38,000 towards a new bus stop on Oxhey Lane.
  - A contribution (£20,000) towards a Beryl Bike parklet in Carpenders Park / South Oxhey; and
  - A dedicated Beryl Bike parklet within the development.

- 4.34 On this basis, subject to conditions and legal obligations securing the above features, HCCHA raise no Highway objection.

Drainage

- 4.35 As confirmed in their letter of 9 April 2026, the Lead Local Flood Authority (LLFA) raise no objection, subject to conditions.
- 4.36 The LLFA agreed during the application process that the sequential test no longer applies as the design and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for its lifetime and would not increase flood risk elsewhere.

Ecology

- 4.37 Herts Ecology have raised no objection as set out in their letter of 12 March 2026, subject to conditions which include securing the required surveys.

Trees

- 4.38 The proposals will have no direct impacts on any important trees on-site that cannot be mitigated, with no trees needing to be felled or pruned. Some sections of existing hedgerow would need to be removed, and some development is proposed to take place within the root protection areas of retained trees.
- 4.39 Whilst there is potential for some indirect impacts on trees as a result of the development, appropriate management plans that can be secured by condition will mitigate to an acceptable degree any future impact. As such, there is no arboricultural objection.

Heritage

- 4.40 The development would have a neutral impact on Oxhey Grange (Grade II listed) and the Front Lodge (Grade II listed).
- 4.41 Due to the lack of apparent historic relationship, long distances and lack of visibility between these assets and the application Site, the proposed development would have a neutral impact on the significance of Grim's Ditch (Scheduled Monument), Grims Dyke Registered Park and Garden (Grade II) and Grimsdyke (Grade II\*).
- 4.42 There would be no harm caused to 'Barn About 30 Metres North of Merry Hill Farmhouse', Merry Hill Road (Grade II listed).
- 4.43 The development is not considered to impact on the Grade II listed 'London Coal Duty Marker, northwest of Burnt Oak Farm and 'Grade II 'Stable in the grounds of Melodies', given the distances involved and due to their relatively localised settings.
- 4.44 The development will not have any impact on the four conservation areas to the north (Bushey High Street, Melbourne Road Bushey Conservation Area, The Lake Conservation Area and Bushey Heath Conservation Area) given the distance of approximately 2 kilometres, and the lack of visual connection.

- 4.45 No objection is raised by the Conservation Officer (Place Services Historic Environment Team).
- 4.46 Hertfordshire LEADS Historic Environment Advisor has no objection to the proposals in archaeological terms, subject to conditions.
- 4.47 The development is considered to conserve the setting of nearby heritage assets and would not impact on assets of archaeological interest

*Air Quality*

- 4.48 Subject to conditions there would be no adverse impacts with regards to air quality as a result of the development.

*Noise*

- 4.49 It is not considered that any unacceptable levels of noise will arise.

*Energy and Sustainability*

- 4.50 The Sustainability & Energy Statement sets out that the proposed development is predicted to perform better than Part L 2021 carbon emission reduction requirements. As this application does not seek approval for the appearance or layout of the proposed buildings, any future Reserved Matters submission would provide full details of the energy efficiency of the proposed buildings.


*Contamination*


- 4.51 Subject to conditions there would be no adverse impacts with regards to contaminated land as a result of the development.

## **5. MATTERS NOT AGREED**

- 5.1 The following matters are not agreed between the Applicant and the Council:
- 5.2 The Site's contribution to purpose (a) of the Green Belt and whether the Site is Grey Belt.
- 5.3 Whether the various features around the Site could restrict and contain development.
- 5.4 Whether all of the provisions of Paragraph 155 of the NPPF are satisfied, in relation to:
  - 155 (a) – the site is not considered to be grey belt;
  - 155 (c) – Whether the development would be in a sustainable location, with particular reference to paragraphs 110 and 115. In particular, whilst the Council considers the contributions made pursuant to paragraph 156 (b) of the NPPF (Golden Rules) to be necessary, it does not consider them to be sufficient to satisfy paragraph 155 (c) of the NPPF.
- 5.5 Whether 'very special circumstances' exist such that the harm to the Green Belt (and any other harm) is clearly outweighed and the weighting to be attached to each of the benefits
- 5.6 The level of landscape harm.

This Statement of Common Ground has been agreed by:

Three Rivers District Council	
<b>Signed</b>	
<b>Name</b>	Liz Fitzgerald
<b>Date</b>	28 May 2026

Boyer (on behalf of Burlington Developments London Ltd)	
<b>Signed</b>	
<b>Name</b>	Philip Allin
<b>Date</b>	28 May 2026

## APPENDIX 1 – CONFIRMATION OF DOCUMENTS

Drawing Title	Author	Reference
Site Location Plan	Pegasus	P24-2204_DE_001_A_1
Parameter Plan	Pegasus	P24-2204_DE_003_C_10
Proposed Site Access Plan	iTransport	ITL200107-GA-002E
Emergency Access Plan	iTransport	ITL200107-GA-007B
Illustrative Landscape Plan	Pegasus	P24-2420_EN_08E
Illustrative Masterplan	Pegasus	P24-2204_DE_003_E_01

Report	Author	Date / Reference
Affordable Housing Statement	Tetlow King	March 2025
Air Quality Assessment	Logika Group	March 2025
Archaeological Desk Based Assessment	HCUK	August 2025
Arboricultural Impact Assessment & Method Statement	ACD	March 2025
Tree Survey	ACD	March 2025
Tree Survey Plan	ACD	PRI24711-01
Tree Protection Plans (Sheet 1)	ACD	PRI24711-02
Tree Protection Plans (Sheet 2)	ACD	PRI24711-02
Tree Protection Plans (Sheet 3)	ACD	PRI24711-02
Tree Protection Plans (Sheet 4)	ACD	PRI24711-02
Bat Tree Assessment	Ecology Solutions	March 2026
Biodiversity Net Gain Report	Ecology Solutions	March 2026
Biodiversity Net Gain Metric	Ecology Solutions	March 2026
Biodiversity Checklist	Ecology Solutions	March 2026
Design and Access Statement (including illustrative Masterplan)	Pegasus	March 2025
Ecological Assessment	Ecology Solutions	March 2026
Education Note	Iceni	November 2025
Flood Risk Assessment and Drainage Strategy (Rev A)	Ardent	September 2025
Flood Risk Assessment and Drainage Strategy Addendum	Ardent	January 2026

<b>Report</b>	<b>Author</b>	<b>Date / Reference</b>
Drainage Strategy (Sheet 1)	Ardent	2403160-ACE-XX-XX-DR-C-0601
Drainage Strategy (Sheet 2)	Ardent	2403160-ACE-XX-XX-DR-C-0602 Rev C (Jan 2026)
Green Belt Assessment	Pegasus	March 2025
Green Belt Assessment Addendum	Pegasus	October 2025
Health Impact Assessment	Boyer	August 2025
Health Note	Iceni	November 2025
Heritage Impact Assessment	Handforth Heritage	March 2025
Housing with Care Needs Assessment	Carterwood	March 2025
Landscape & Visual Impact Assessment	Pegasus	March 2025
LVIA Addendum	Pegasus	December 2025
Phase 1 Geo-Environmental Assessment Report	Brownfield Solutions	March 2025
Planning Statement	Boyer	May 2025
Public Engagement Report	Thorncliffe	November 2025
Sequential Test	Boyer	May 2025
Sustainability and Energy Statement	Blue Sky Unlimited	March 2025
Transport Statement	iTransport	March 2025
Travel Plan	iTransport	March 2025
Utilities Assessment	Ardent	March 2025

<b>Response Letter</b>	<b>Author</b>	<b>Date / Reference</b>
iTransport Response to HCC Comments	iTransport	9th September 2025
ACD Environmental Response to Woodland Trust Comments	ACD	11 <sup>th</sup> September 2025
Ardent Response to HCC LLFA Consultee Comments	Ardent	17 <sup>th</sup> September 2025
Boyer Letter – Additional Grey Belt Information	Boyer	3 <sup>rd</sup> October 2025
Green Belt Purpose A Diagram	Boyer	3 <sup>rd</sup> October 2025
Site Photos	Boyer	3 <sup>rd</sup> October 2025
Lord Banner KC Legal Opinion	Lord Banner KC	24 <sup>th</sup> September 2025

<b>Response Letter</b>	<b>Author</b>	<b>Date / Reference</b>
Boyer Letter – Grey Belt, Sustainability and Consultees	Boyer	7 <sup>th</sup> November 2025
Sustainable Transport Improvements	iTransport	7 <sup>th</sup> November 2025
Boyer Letter – Housing with Care Affordable Housing	Boyer	6 <sup>th</sup> January 2026
Summary of Sustainable Transport Improvements	iTransport	13 <sup>th</sup> January 2026
Boyer Letter – Ecology Response	Boyer	19 <sup>th</sup> February 2026
Boyer Letter – Grey Belt, Golden Rules, Local Plan	Boyer	23 <sup>rd</sup> February 2026
Ecology Solutions Response Note	Ecology Solutions	6 <sup>th</sup> March 2026
Lord Banner KC Legal Opinion	Lord Banner KC	10 <sup>th</sup> March 2026
Boyer Letter – Response to Letter from Matthew Pennycook MP	Boyer	19 <sup>th</sup> March 2026

## APPENDIX 2 – KEY DEVELOPMENT PLAN POLICIES

Core Strategy (2011)	
Policy PSP3	Development in Secondary Centres
Policy CP1	Overarching Policy on Sustainable Development
Policy CP2	Housing Supply
Policy CP3	Housing Mix and Density
Policy CP4	Affordable Housing
Policy CP8	Infrastructure and Planning Obligations
Policy CP9	Green Infrastructure
Policy CP10	Transport and Travel
Policy CP11	Green Belt
Policy CP12	Design of Development

Development Management Policies (2013)	
Policy DM1 (& Appendix 2)	Residential Design and Layout
Policy DM2	Green Belt
Policy DM3	The Historic Built Environment
Policy DM4	Carbon Dioxide Emissions and On Site Renewable Energy
Policy DM6	Biodiversity, Trees, Woodland and Landscaping
Policy DM7	Landscape Character
Policy DM8	Flood Risk and Water Resources
Policy DM11	Open Space, Sport and Recreation Facilities and Children's Open Space
Policy DM13 (& Appendix 5)	Parking

**APPENDIX 3 – LORD BANNER KC LEGAL OPINION  
(SEPTEMBER 2025)**

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

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**OPINION**

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**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 9<sup>th</sup> 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 openness<sup>55</sup>. 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 provides<sup>1</sup>:

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

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<sup>1</sup> 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.*

<b><i>Contribution</i></b>	<b><i>Illustrative features</i></b>
<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"><li><i>- be adjacent or near to a large built up area</i></li><li><i>- if developed, result in an incongruous pattern of development (such as an extended “finger” of development into the Green Belt)</i></li></ul>
<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"><li><i>- having physical feature(s) in reasonable proximity that could restrict and contain development</i></li><li><i>- be partially enclosed by existing development, such that new development would not result in an incongruous pattern of development</i></li><li><i>- contain existing development</i></li><li><i>- being subject to other urbanising influences</i></li></ul>
<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"><li><i>- are not adjacent to or near to a large built up area</i></li><li><i>- are adjacent to or near to a large built up area, but containing or being largely enclosed by significant existing development”</i></li></ul>

### 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 permanent<sup>2</sup> 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)?**

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<sup>2</sup> 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 3<sup>rd</sup> 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.**

**Keating Chambers  
15 Essex Street  
London  
WC2R 3AA**

**24<sup>th</sup> September 2025**

**APPENDIX 4 – LORD BANNER KC LEGAL OPINION  
(MARCH 2026)**

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

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**FURTHER OPINION**

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**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. It is due to be considered by the Council’s Planning Committee on 19<sup>th</sup> March 2026.
4. 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)”*
5. I previously advised on this matter by way of an Opinion dated 24<sup>th</sup> September 2025. I assume the reader of this Further Opinion is familiar with the contents of my earlier Opinion which I take as read.
6. I am now asked two further questions. I set these out, and my answers to them, in the next section of this Further Opinion.

## II. THE ADDITIONAL QUESTIONS AND MY ANSWERS TO THEM

**Q1. Does the range of transport modes available, either existing or those delivered as a result of the proposed development, represent a genuine choice to travel in a sustainable way? If so, do these transport modes, and their proximity to the application site, maximise sustainable transport solutions in accordance with paragraph 110 of the National Planning Policy Framework (“NPPF”)? Overall, having regard to the range of services and facilities and their proximity to the site more generally, can the proposed development be considered to be in a sustainable location, in the context of paragraph 155c of the NPPF?**

7. In appeal decisions APP/P1940/W/22/3311477&3311479 *Land at Church Lane, Sarratt* (3<sup>rd</sup> May 2024), Inspector Matthew Nunn rejected the Council’s objection on sustainability grounds to two developments proposed by Burlington at Sarratt.

8. The Inspector stated at paragraph 76, that in relation to this issue: “*A realistic approach is required, and residents of the appeal developments would be in no different position to other existing residents in Sarratt, nor in parts of the wider District*”.

9. It is plain from the Transport Assessment for the current application that the opportunities for accessing employment, services and facilities by sustainable transport will be significantly greater for the present scheme than in the Sarratt schemes that were found to be acceptable by the Inspector. Not only are there bus services within a c.700m walking distance and a range of other facilities within a c. 20 minute walk or less than 8min cycle, there is also a train station with direct services to London within a 14 minute walk or 5 minute cycle ride.

10. I also note that the Council recently approved an application for 96 homes on land to the east of Oxhey Lane (Ref. 25/0155/FUL) in relation to which the nearest station, Bushey, was 1.4km from the site – which is

further away than the nearest station to the current application site (Carpenders Park, c.1.05km away). Members considered that other scheme to be sufficiently sustainably located.

11. There are strong grounds for concluding that the site meets the criterion set out in paragraph 155(c) of the NPPF. A refusal on the basis that this criterion is failed would not, in my opinion, be defensible. There would be a risk of costs if the Council could not explain cogently why it acted inconsistently with its grant of planning permission 25/0155/FUL despite the development to which that permission relates being located further away from the nearest train station than the development in the present case would be.

**Q2. The Planning Practice Guidance (“PPG”) provides guidance on how the contribution land makes to the relevant Green Belt purposes should be assessed. In the context of purpose (a), to inform the level of contribution the site makes to this purpose, taking on board the characteristics of the site and surroundings, would the proposed development result in an incongruous pattern of development? If not, why not?**

12. Whilst this involves the exercise of planning judgment, it does as a matter of law require regard to be had to material considerations including the existing care home on the eastern side of Oxhey Lane, as well as the recently approved development to the east of Oxhey Lane under the aforementioned planning permission 25/0155/FUL, the design rationale and proposed landscaping strategy set out in the application documents and the PPG which illustrates the concept of an *“incongruous pattern of development”* with the example of *“an extended “finger” of development into the Green Belt”* (which the proposed development plainly would not comprise). Having regard to those, it would be untenable for the council to hold that the development would result in an incongruous pattern of development. A reason for refusal on this basis would not be sustainable on appeal.

13. The case set out in the application for treating the Site as Grey Belt (in relation to which the issue of whether the development would be an “incongruous patten of development” is just one consideration amongst many, as set out in my previous Opinion) is compelling.

#### **IV. CONCLUSION**

14. 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. an extended “finger” of development into the Green Belt



**LORD BANNER K.C.**

**Keating Chambers  
15 Essex Street  
London  
WC2R 3AA**

**10<sup>th</sup> March 2026**

**APPENDIX 5 – DR ALEX WILLIAMS LEGAL OPINION  
(DECEMBER 2025)**

## RE: LAND EAST OF OXHEY LANE, CARPENDERS PARK

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### ADVICE

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1. I am instructed by Three Rivers District Council (“**the LPA**”) to advise in connection with Green Belt issues concerning application 25/1020/FUL (“**the Application**”), relating to Land East of Oxhey Lane, Carpenders Park (“**the Site**”).
2. I am asked specific questions, which I answer in turn below. These questions fall into three broad categories: (a) general questions (there are 6); (b) site-specific questions (there are 2); and (c) certain questions asked of Lord Banner KC, counsel for the developer, whose legal opinion I have read (there are 4).

### BACKGROUND

3. The Application seeks outline planning permission (appearance, layout, landscaping and scale reserved) 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, parking, open space and landscaping.
4. The Site lies in the Green Belt. It lies to the east of the large built-up area of Carpenders Park, with the A4008 (Oxhey Lane, running from north to south) separating the two. The Site’s western boundary contains a “cut-out”

of land, if I can put it that way, which contains the Carpenters Park Care Home and a telecommunications mast. The Site lies in close proximity to the Hartsbourne Storm Flood Storage Area and Flood Zones 2 and 3 (both to the south) and Mutton Wood (further south). Merry Hill Wood, which is owned by the Woodland Trust, lies immediately to the east of the Site.

5. The developer contends that the Site is grey belt on account of its failure to contribute strongly to any of purposes (a), (b) or (d) of NPPF §143. The LPA does not appear to dispute the developer's position in relation to purposes (b) and (d) but apparently queries the position in relation to purpose (a). The developer also contends that, as grey belt development, the development is not inappropriate Green Belt development because it complies with NPPF §155. Alternatively, the developer contends that the development is inappropriate but that very special circumstances exist to justify it.
6. The developer has provided an opinion from Lord Banner KC, dated September 2025, which takes its lead from the developer's Green Belt assessment (March 2025) and the planning statement (May 2025) in concluding that the Site is grey belt and satisfies NPPF §155. The developer has also provided notes to the LPA from Boyer (planning consultant) dated 3 October and 7 November 2025, which, among other things, reinforce the developer's view that the Site is grey belt given that it makes no more than a moderate contribution to purpose (a).
7. The LPA now seeks my advice on the questions below.

## ANALYSIS

### General Questions

**Q1. When considering development against NPPF §155, is it correct only to apply the site circumstances of the land subject of an application rather than what is actually proposed as part of a development scheme? From several Grey Belt appeal decisions it appears inspectors have been influenced by mitigation proposed as part of a development when concluding whether land contributes strongly or moderately to the relevant purposes.**

8. As I understand it, I am being asked whether the decision-maker should consider proposed mitigation when applying NPPF §155(a) and asking whether the development would fundamentally undermine the purposes of the remaining Green Belt across the area of the plan. I assume that the mitigation measures in question can all be validly secured by way of condition or planning obligation.
9. In my view proposed mitigation is a relevant consideration. Neither the NPPF nor the PPG indicate otherwise. It stands to reason that mitigation should be considered because the purpose of NPPF §155(a) is to assess the effects on the Green Belt of the development proposed. It would be artificial to consider this question without considering proposed mitigation. It will be a matter of planning judgment as to whether the particular proposed mitigation measures are sufficient to prevent the development from fundamentally undermining the remaining Green Belt purposes.

**Q2. When considering whether a site strongly contributes to urban sprawl (purpose (a)), the guidance refers to “lack of physical feature(s)” rather than the absence of any at all. Therefore, could one form a judgment that despite there being physical feature(s) in reasonable proximity to a site that could restrict and contain development, the land if developed adjacent to a large built-up area could still result in an incongruous pattern of development and thus strongly contribute towards urban sprawl?**

10. As I understand it, I am being asked the general question of whether development can still be found to result in an incongruous pattern of development even though it contains one or more physical features in reasonable proximity that could restrict and contain development.
11. In my view this is possible, albeit not “likely”, to use the PPG’s language. Whilst the PPG is a material consideration, the language of the guidance points against applying it rigidly. For instance, the PPG states that it provides considerations “for informing” the question of contribution to Green Belt purposes. The guidance concerning purpose (a) provides that a strong contribution is “likely” to be made by an assessment area that lacks the relevant physical features. While a site will *typically* lack the relevant physical features if it makes a strong contribution, the PPG stops short of saying that this will *always* be the case. The overall question of contribution to purpose (a) remains a question of planning judgment that depends on all relevant factors.
12. The point is that the PPG provides guidelines, not tramlines. If in the circumstances there is good reason to believe that development would

result in an incongruous pattern, even though there are one or more features that could restrict and contain development, then it is open to the LPA to take that view as a matter of its planning judgment – provided of course that the LPA properly engages with the content of the guidance and properly explains why, despite that guidance, the LPA has reached the conclusion it has reached.

13. I would, however, expect such circumstances to be relatively rare. The thrust of the guidance is that a site containing one or more physical features will usually (“likely”) make a moderate rather than a strong contribution.

**Q3. Or alternatively, because physical feature(s) exist, should it automatically be concluded that a site contribution is weakened and therefore it can only ever moderately contribute to purpose (a)?**

14. No. The presence of a single physical feature does not *automatically* preclude a site from making a strong contribution to purpose (a).
15. However, the PPG does indicate that this is “likely” to be the case. I agree with Lord Banner KC’s statement (at his §23) that the presence of one or more relevant features “can” mean a site’s contribution is moderate rather than strong. This remark captures both the *likelihood* that it will make only a moderate contribution but also the *possibility* that the contribution is nevertheless strong, depending on the circumstances. As indicated above, any departure from the PPG’s characterisation of the “likely” position would need to be fully justified.

**Q4. Is it correct that physical features can include natural or man-made features, such as woodland (subject to their long-term management) and a below-ground flood storage area which place limitations on the spread of development?**

16. Yes. Neither the NPPF nor the PPG exclude any particular physical features from consideration. In keeping with the overarching idea that the extent of the contribution is a matter of planning judgment, I see no reason why man-made features cannot also be thought capable of restricting and containing development.
17. For the avoidance of doubt, the reference to enclosure by “existing development” (in the table concerning moderate contributions) does not undermine this position. The focus of that passage is on the overall pattern of development. It therefore appears to contemplate development in the broad sense, i.e. built form generally. As I read it, that passage does not seek to suggest a distinction between “development” and “physical feature(s)”, the former being man-made and the latter being natural.

**Q5. Would the presence of one physical feature to just a small part of a site be enough to weaken its contribution from strong to moderate regardless if adjacent to a large built-up area?**

18. As I understand it, I am being asked whether a site which is adjacent to or near a large built-up area can be a moderate contributor to purpose (a) due to a single physical feature in just a small part of the site. (According to the PPG, a site which was not adjacent or near to a large built-up area would likely make only a weak or no contribution to purpose (a)).

19. In my view this is possible according to the guidance, which provides that a moderate contributor is “likely” to have one or more “physical feature(s) in reasonable proximity that could restrict and contain development”. However, and as per my answer to the questions above, whether the particular feature does in fact render the site a moderate rather than a strong contributor remains a question of planning judgment. The LPA would need to consider factors such as the nature of the feature, its size, its proximity to the site and its likely potential to restrict and contain development. Again, as above, departure from the PPG’s characterisation of the “likely” position would need proper justification.

**Q6. If the Golden Rules are met, does this attract significant weight in favour of the proposed development, separate from any other benefit?**

20. NPPF §158 provides that a “development which complies with the Golden Rules should be given significant weight in favour of the grant of permission”. The learned authors of the NPPF Handbook note (at N158.2) that it is “appropriate that such development should be given substantial [sic. “significant”] weight in favour of the grant of permission” given that it necessarily meets a demonstrable unmet need (under NPPF §155(a)) and meets the more onerous Golden Rules requirements attaching to major development.

21. I am not sure what the question means when asking whether Golden Rules development should attract significant weight “separate from any other benefit”. I note that Lord Banner KC did not give a clear answer (at his §33) when asked the same question, possibly for that reason. But in my view the

implication of NPPF §158 is clear. When carrying out the planning balance, the decision-maker must recognise that compliance with the Golden Rules is a factor that tells significantly in favour of granting permission.

### Site-Specific Questions

**Q7. Whilst parts of the site are contained, the most northern parcel is not and given its topography is very visible from the adjacent large built-up area. However, would officers be right to conclude that regardless of the characteristics of the northern parcel, the site must be looked at in its totality and therefore, as parts of the site are weakened by physical features/existing development, it must be concluded that the site can only moderately contribute towards urban sprawl?**

22. It is correct that the Site needs considering as a whole and correct that the features of the northern parcel are a relevant factor in the overall question of the strength of the contribution of the whole site to purpose (a). According to the PPG, it is “likely” that a site that is at least *partially* (i.e. not entirely) enclosed by existing development makes only a moderate contribution to purpose (a), if new development would not result in an incongruous pattern of development. It is also “likely” that the Site makes a moderate contribution if there are one or more physical features in reasonable proximity that could restrict and contain development.

23. So in these circumstances it is likely that the Site would make only a moderate contribution to purpose (a), according to the PPG. However, it is not correct to say that that LPA “must” reach such a conclusion or that the

Site can “only” contribute moderately. As per my answers above, the question is one of planning judgment, the PPG provides for guidelines not tramlines, and it may be possible to reach a different conclusion provided that departure from the PPG’s characterisation of the “likely” scenario is properly reasoned and fully justified.

**Q8. Should a C2 use proposing an Extra Care facility (the level of care which is likely to be secured by legal agreement) on Green Belt land which is considered ‘grey belt’ specifically provide affordable housing, having regard to the Golden Rules?**

24. This is a complicated issue and is probably the proper subject of a separate advice in its own right.
25. The High Court has held that dwellings can include “housing with care”, provided that each unit contains all the facilities necessary for day-to-day private existence: see *Rectory Homes Ltd v SSHCLG* [2021] PTSR 143 (HC), at §53 (Holgate J). In that case, the claimant-developer alleged that the Inspector had misapplied local plan policy, which required the provision of 40% affordable housing by any development providing a net gain of three or more “dwellings” (see §11). Since the policy did not make any express or implicit reference to the Use Classes Order, on a proper construction it did not exclude C2 units from the affordable housing requirement provided those units satisfied the legal definition of a dwelling.
26. In terms of the local plan position, the LPA’s Policy CP4 sets an affordable housing requirement of 45% but applies that requirement to “all new

housing”. Like the policy in Rectory Homes, it draws no express distinction between housing that might fall within Class C2 as opposed to Class C3. Nor does it do so implicitly, as far as I can see. This position is consistent with §§3.4-3.6 of the SPD, quoted in my instructions, which provides that “any residential use that involves individual units of self-contained accommodation... will be regarded as residential and Policy CP4 will apply”. So as a matter of local policy it is at least arguable that any self-contained living accommodation is subject to affordable housing requirements, even Extra Care units.

27. In terms of the position under the NPPF, it is important to recognise that Rectory Homes only concerned the scope of local plan policy. The judgment also predated the introduction of the Golden Rules in 2024. There is no High Court ruling that answers the question of whether Golden Rules requirements apply to Extra Care as well as C3 dwellings.
28. Like the local plan policy in Rectory Homes, NPPF §156 does not distinguish C3 from C2 housing. I also note that in Chapter 5, which concerns the delivery of a sufficient supply of homes, NPPF §63 lists “housing-with-care” as among the various tenures needed for different groups. To my mind it is therefore arguable that the NPPF envisages affordable housing requirements applying to C2 housing as well as C3, provided of course that the housing in question constitutes “dwellings” that offer the necessary facilities for private day-to-day existence.
29. From the planning statement accompanying the Application (see §§6.23-6.25, 6.29), it is not clear why the developer believes that the Golden Rules

do not apply to the Extra Care units. In the first instance, and given the complexity and novelty of the policy point at stake, I would recommend asking the planning consultant to comment on the issue.

30. If the Extra Care units are subject to affordable housing requirements under the Golden Rules, then I agree that NPPF §157 would cap those requirements at 50%.
  
31. As to whether the *whole* development, including the C3 provision, becomes inappropriate if Extra Care affordable housing is required but not provided, that substantive position is arguable, in my view. But again, I would again recommend seeking the developer's input in the first instance. The purpose of NPPF §§155-157 is to determine whether a given proposal is or is not inappropriate Green Belt development. Since the Application is a single proposal, with all components of the Application within the same red line boundary, there is at least a case for saying that the grey belt route becomes closed to the whole Application if any part of it must comply with the Golden Rules but does not. However, in the planning balance, I would still expect the LPA to afford due weight to the fact that a major part of the proposal (the C3 units) satisfies a demonstrable unmet need and is otherwise Golden-Rules compliant.<sup>1</sup>

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<sup>1</sup> Whether the proposal should be afforded significant weight under NPPF §158 for part-compliance with the Golden Rules, even though the development as a whole is inappropriate, is a moot point. NPPF §158 does not state in terms that significant weight can only attach to a Golden Rules-compliant development *if it is also regarded as appropriate development* under NPPF §155, although to my mind that is probably the proper reading of NPPF §§155-158 when taken together.

32. If the Extra Care units are *not* subject to Policy CP4, I doubt that it would be open to the LPA to apply the 50% affordable housing requirement anyway. Although NPPF §157 imposes a default requirement of 50% in “the absence of a pre-existing requirement for affordable housing”, this would not be the kind of case in which no affordable housing requirement existed at all. Rather, it would be the case that a requirement existed but (for whatever reason) did not extend to Extra Care units. To my mind that is probably not the sort of situation contemplated by NPPF §157 when imposing the default requirement. On that basis I consider that the affordable housing provision would likely be nil if Extra Care units were not in fact caught by Policy CP4. However, and as with the other Extra Care-related issues, I would recommend canvassing the developer’s views in the first instance.

### **Questions Asked of Lord Banner KC**

**Q9. 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?**

33. Yes. From my answers above, my view will be clear that the PPG requires consideration of all of these factors when considering the strength of the Site’s contribution to purpose (a).

**Q10. 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**

**the 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)?**

34. The list of factors that may weaken the land's contribution from strong to moderate is not exhaustive. This is clear from the PPG's use of the words "such as (but not limited to)". It follows that other factors may be relevant to that question.
35. I agree with Lord Banner KC that it is relevant that the southern boundary of the Site borders Flood Zones 2 and 3. I also tend to agree that, with multiple factors being at play that weaken the Site's contribution, the starting point under the PPG is that the Site makes only a moderate contribution to purpose (a). Again, it is a question of planning judgment for the LPA and theoretically possible to take a different view. The PPG lays down guidelines not tramlines. But the LPA would need to provide proper justification for its decision to go against the grain of the guidance.
36. I also agree that the County Council's future plans to develop to the north of the Site are not relevant to the question of the Site's existing contribution.

**Q11. In respect of purpose (b), does Counsel agree with the conclusions reached by Pegasus in their Green Belt Assessment (paras 3.9-3.15)?**

37. On the basis of my instructions I have no reason to doubt the analysis in the Pegasus report, which appears plausible and well-reasoned. However, it is a question of planning judgment on which, as a lawyer, I am not well-placed to comment.

**Q12. In respect of 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?**

38. I am not aware of any such case-law.

### **CONCLUSION**

39. My answers to the various questions are given above. Instructing Solicitors are welcome to contact me if I can assist any further.

**DR ALEX WILLIAMS**  
FRANCIS TAYLOR BUILDING  
20 December 2025