

IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION

BY BURLINGTON DEVELOPMENTS LONDON LIMITED ("THE
APPLICANT") TO THREE RIVERS DISTRICT COUNCIL ("THE
COUNCIL")

CALLED IN UNDER S.77 OF THE TOWN AND COUNTRY PLANNING
ACT 1990

RE. LAND EAST OF OXHEY LANE, CARPENDERS PARK

APPLICANT'S CLOSING SUBMISSIONS

I. INTRODUCTION

1. The context for considering this application is as follows.
2. Three Rivers is a place where the national housing crisis is being experienced particularly acutely.
3. The Council is currently able to demonstrate only a 1.2 year housing land supply ("HLS") – a shortfall of 3,808 homes.
4. It has persistently failed the Housing Delivery Test in recent years.
5. There is an overwhelming affordable housing shortfall – in 2023/24 only 3 affordable homes were completed in the entire District.
6. The Council has not had a 5YHLS for at least 8 years, and the position is worsening. The shortfall is almost 1,000 homes more than at the time of the Sarratt inquiry just two and a half years ago.
7. All of this is exacerbated by the Council's woefully out of date local plan and glacial movement towards getting a new one in place.
8. Back at the time of the Sarratt inquiry (to which the Applicant was also a party), we were told the Council was working to have a new plan in

place by the end of 2026 to deal with the long-standing planning and housing crisis in the District.

9. Predictably enough, this has not transpired. The crisis has instead continued. Councillor Oliver Cooper, a member of the Council's Planning Committee, conceded to the inquiry under cross-examination ("XX") that he was "*not proud*" of its track record.
10. It has even necessitated the intervention of the Housing and Planning Minister to direct the Council to include additional allocations in the Council's Regulation 19 plan – the Council's version of that plan having massively under-provided for housing.
11. Those additional allocations directed by the Minister included the application site.
12. The proposed development before you is consistent with and supported by that direction.
13. Yet the very day after the direction, the Council's Planning Committee in clear defiance of the Minister – and contrary to the clear recommendation of a comprehensive officer's report (the reasoning of which was backed up by two counsel opinions) that the proposed development was justified both as exempt w Grey Belt **and** on the basis of Very Special Circumstances ("VSC") – resolved to refuse planning permission for the proposed development.
14. Their rationale was not that it was premature to grant permission prior to the plan's examination and adoption (such an allegation would have been impossible to sustain in any event having regard to the provisions of NPPF para. 50 on prematurity).
15. It was an in-principle opposition to the development of the site.
16. A clear act of defiance of the Minister and the Council's own professional

planning officers.

17. A paradigm of the well documented failures of the planning system to put delivery over parochialism and politics.
18. Little wonder that the Minister saw this as the opportunity for the first use of his new policy on calling in schemes for 150+ dwellings that the Local Planning Authority proposes to refuse.¹
19. This first such case is an opportunity for you, and him, to send a clear message both to the Planning Committees both of this Council and up and down the country that they need to up their game.
20. A sea change in approach is needed.
21. The kind of decision-making that has led here today, rather than getting on with delivering a development which should have been permitted months ago, has to stop.
22. A swift, decisive and emphatic decision to grant this application with a full award of costs in this first of the 150+ call-in cases is the only way to ensure the message gets home.
23. Anything less and Planning Committees will continue to think they can game the system for the sake of shoring up their votes from the vocal haves, at the expense of the silent have-nots.
24. The evidence before the inquiry from the hired guns brought into defend the Council's decision, and from the Rule 6 party who seek to deprive others of the privilege they themselves have of being fortunate enough to

¹ I use the term '*policy*' decidedly, because the legal direction requiring as a matter of *law* consultation of the Secretary of State in cases where the LPA proposes to refuse permission for 150+ dwelling scheme came into force four days later; the direction was unnecessary in this case because the Secretary of State called in the application two working days after the Committee decision, before the Council had got around to issuing a decision notice. Irrespective, this case is plainly the first test of the 'new regime' in relation to such cases.

have a home in Carpenders Park, is just as flimsy as the Committee's original reasoning – notwithstanding the attempt to retrofit additional reasoning which the Committee itself did not have in mind (see further below).

25. Indeed, Ms Fitzgerald for the Council accepted in XX that the benefits of the proposed development *do* outweigh the harms, just not sufficiently so for there to be VSC.
26. The Rule 6 party offered no evidence on the planning balance.
27. So we are debating an application which *taking the opposing case at its highest* is net **beneficial**.
28. For the reasons explored at the inquiry and outlined below, however, the case for the development is far more compelling than that.

II. **GREY BELT**

29. On the Grey Belt case for planning permission, the Council's and Rule 6 party's opposition to the application hangs by two threads:
 - a. the proposition that the situation at the southern boundary of the site means that the site "*strongly*" rather than "*moderately*" contributes to Green Belt Purpose (a) and is therefore not Grey Belt (applying the NPPF Glossary definition);
 - b. the proposition that the site is not a sustainable location for the purposes of NPPF paragraph 155(c).
30. I deal with these in turn below.
31. There is unanimity that all other requirements for Grey Belt development in NPPF paragraphs 155-159 are satisfied. The supporting rationale for this is in the evidence of Mr Allin and Mr Evans for the Applicant, as well as the Planning Statement (CD 1.38), Green Belt Assessment (CD1.32), and

additional post-application documents at CD1.53-CD.1.55, CD1.57-1.58 and CD1.72.

i) Green Belt Purpose (a)

Applicable principles

32. GBP (a) is “to check the unrestricted sprawl of large built up areas”: see NPPF paragraph 143.
33. It does not extend to the matter of coalescence – that is dealt with by GBP (b).²
34. “Sprawl” in this context means the creep, or spread, of development.
35. The word “unrestricted” is of significance. As Ms Fitzgerald accepted in XX, the overarching consideration in this context is *how important is the site to preventing the **unrestricted** sprawl (i.e. creep or spread) of Carpenders Park?*
36. As she also agreed, this in turn requires consideration of *the extent to which, if the site were to be developed, the sprawl (i.e. creep or spread) of Carpenders Park beyond the site would be prevented by features in the proximity of the site.*
37. It is common ground that this question should be answered by reference to the guidance in the PPG in relation to identifying Grey Belt land (CD3.1). Ms Fitzgerald confirmed that the Council was not asking you or the Secretary of State to depart from that guidance.
38. Ms Fitzgerald confirmed in XX that she accepts the approach to the PPG set out in the legal opinions by Dr Alex Williams and myself that are appended to the Planning Statement of Common Ground (CD 6.4, Appendices 3 and 5). I incorporate by reference the analysis in those opinions into these closing submissions, without repeating them all here

² Fitzgerald XX; see also CD 5.7 *Leighton Buzzard Road* at para. 148.

(for the sake of brevity), but note in particular they include:

- a. **A site which has “one or more” “features that weaken the land’s contribution” to GBP (a) is, applying the PPG, likely to be in the “Moderate” category** (see paras. 22-24 of my opinion). **Accordingly, just one such feature can mean a site’s contribution is “Moderate”, not “Strong”** (see para. 23 of my opinion and para. 15 of Dr Williams’ opinion). This is consistent with the PPG guidance on sites that make a “Strong” contribution describing such sites as ones which “lack” such features. The primary meaning of the word “lack” in this context is “to not have”.³ Note also the use of the bracket in “feature(s)” in the non-exhaustive list of features that can make a site’s contribution “Moderate” rather than “Strong”, which further highlights that one such feature can be enough)
 - b. As Dr Williams notes at paragraph 35 of his opinion, **instances where a site has one or more such features and still makes a “Strong” contribution will be “relatively rare”.**
 - c. **Proposed mitigation (landscaping, planting etc) is relevant and can constitute such features:** see paragraph 9 of Dr Williams’ opinion and also paragraph 21 of the Camelot appeal decision (CD 5.13).
 - d. **Relevant features can be natural or man-made:** see paragraph 24 of my opinion and paragraph 16 of Dr Williams’ opinion.
39. The bullet-point list of relevant features in the PPG guidance on a “Moderate” contribution is expressly non-exhaustive, being prefaced with the words “such as (but not limited to)”. The semantic points put by Ms Sargent to Mr Allin in XX about what is meant by a “physical” feature in

³ [LACK | English meaning - Cambridge Dictionary](#). [LACK definition and meaning |](#)

the first bullet point are therefore unhelpful to the analysis you and the Secretary of State have to make.

40. In the PPG relating to a “*Strong*” contribution, the bullet points in the second half of the guidance are prefaced with the words “*They are **also** likely to include all of the following features*” (emphasis added). It is clear from the word “*also*” that the guidance treats these as additional, not alternative, features that a site with a “*Strong*” contribution will ordinarily have – and therefore having these features is not likely to be sufficient for a site’s contribution to be “*Strong*” unless it also “*lack[s] physical feature(s) in reasonable proximity that could restrict and contain development*”. It is therefore wrong to treat the reference to “*an incongruous pattern of development*” as a free-standing gateway to a “*Strong*” contribution – that is contrary to the express wording of the PPG.
41. Ms Fitzgerald agreed in XX that the green belt assessments undertaken for the emerging local plan were of less utility than a site specific assessment done in relation to this particular site and this particular development. See also the comments of the Sarratt Inspector at CD 5.1 paragraph 25 (“*coarse-grained*”; “*it is not a fine-grained analysis examining the contribution of individual sites to the Green Belt, or the effects of these particular developments*”).

Application of the principles to the application site

42. The Council’s evidence was fundamentally flawed by an insistence (despite Ms Fitzgerald agreeing the principles above in XX) that the site needed to be “*fully contained*” in order to make a “*Moderate*” rather than “*Strong*” contribution to GBP (a): see Ms Fitzgerald’s proof para. 5.48 and Mr Dawson’s proof para. 8.13. Such an approach is unsupported by the PPG; and as noted above Ms Fitzgerald made clear she was seeking to apply the PPG, not advocate a departure from it.

43. There is no dispute with the Council that the site has *“features that weaken the land’s contribution”* to GBP (a), and *“physical feature(s) in reasonable proximity that could restrict and contain development”* to the West (the Oxhey Lane and the care home), to the East (Merry Hill Wood⁴) and to the North (the well-established hedgerow boundary along which a series of Category A and B trees run, 13 of which are subject to a TPO – additional planting is also proposed to this boundary). ⁵ MHCLG officials considering the application may wish to note that these features can be identified in plan form on on Figure 5 of the Officer’s Report (CD 2.2).
44. Ms Fisher agreed in XX that unrestricted sprawl in each of these three directions would continue to be *“checked”* (to use the NPPF paragraph 143(a) terminology) post-development. That is, with respect, fatal to her suggestion that the site’s contribution to the Grey Belt is *“Strong”* rather than *“Moderate”*.
45. Ms Fisher somewhat half-heartedly took a point for the Rule 6 Party in relation to the Northern boundary, based upon the proposed allocation for a school to the north of the appeal site – that would not be *“unrestricted sprawl”* of development from the appeal site arising as a consequence of the current application being allowed – it would be a free-standing, planned allocation for an entirely different kind of use (and doubtless with its own landscape mitigation and defensible boundaries).
46. The focus of both Ms Fisher and Ms Fitzgerald was on the southern boundary. Even if there were no relevant features on the southern boundary, a straightforward application of the PPG would lead to the conclusion that the features on all three other boundaries mean that the

⁴ As to which see the plan at Mr Allin’s Appendix 1 and note that the wood is owned by the Woodland Trust whose objectives are to protect and restore woodland. There is no realistic prospect that they would seek to develop the wood or sell it to a developer; and no realistic prospect that its development would obtain planning permission.

⁵ See CD 1.36, the LVIA at Appendix 1 (the Illustrative Masterplan) and Mr Evans’ Appendices, viewpoint 2B.

site's contribution to checking the *unrestricted* sprawl of Carpender's Park is not "*Strong*" but "*Moderate*".

47. However, on this boundary too there is a feature that weakens the site's contribution to GBP(a): namely the Hartsbourne Stream Flood Storage Area ("**HSFSA**"), which is an Environment Agency ("**EA**") managed flood defence asset. See the area marked blue in Figure 5 of the Officer's Report (CD 2.2). The history of the HSFSA is set out in Mr Allin's proof at paragraphs 6.6-6.7. It is designed so that the area upstream from the physical 'dam' will flood in a design storm event (instead of the residential areas the other side of the dam flooding), and thereafter drain off. The EA has confirmed in writing that the extent of the "*operational asset*" is the entire area marked with a purple dotted line in the correspondence at Mr Allin's Rebuttal Appendix 2 – which spans the entire southern boundary of the application site – and that it "*cannot be developed in any way*". Ms Fitzgerald's assertion in her proof at paragraph 5.35 that "*it is a land designation rather than a physical feature*" is simply wrong (as she would have discovered had she taken the trouble to ask the EA about it before writing her proof). The Council's closing submissions repeat this fundamental error at paragraph 8.5, describing the HSFSA as merely a "*planning designation*" – a submission which is wholly untenable in the light of the evidence from the EA. This fundamental error goes to the heart of the Council's objection as it is an essential step in the logic of their closing submissions on GBP (a).
48. Tellingly, Ms Fitzgerald conceded in XX that if the "dam" spanned the whole of the southern boundary, she would accept it was a feature that weakens the land's contribution to GBP(a) and would thus concede that the Site's contribution is moderate. Yet as the EA themselves have confirmed the flood storage area is as much part of the operational asset as the physical dam – they are designed to operate in harmony together. One cannot work without the other. Neither can be developed. Therefore

the entirety of the asset – and thus the whole of the southern boundary, is a feature that weakens the site’s contribution to GBP(a) because it would be impossible for development to creep or spread (and thus sprawl) from the application site in a southward direction. Ms Fitzgerald did eventually concede in XX that there is no realistic prospect that development could stray into this area.

49. Ms Fisher took a separate point, namely that development could nonetheless come forward the other side of the HSFSA. There was no evidence put forward to suggest that was likely, but in any case it would not be sprawl since it would not be development creeping or spreading southwards from the application site, but a free-standing separate development (to be considered on its merits if it ever came forward) some distance away from the application site.
50. Both Ms Fitzgerald and Ms Fisher appear to run the argument that the site should in any case be treated as making a “Strong” contribution to GBP(a) on the basis that its development would be “*incongruous*”. That argument is misconceived in principle because as noted above, the reference to “*incongruous form of development*” in the PPG on “Strong” contribution to GBP(a) is additional, not alternative, to the expectation for a lack of physical features in reasonable proximity that could restrict and contain development.
51. In any event, it is a bad point. The development of the site would not be incongruous as Mr Evans’ evidence and photomontages show (see in particular the 15 year photomontage in his rebuttal appendices). Given that the very purpose of Grey Belt is to facilitate necessary development in the Green Belt including on urban edges, it would be self-defeating for the definition of Grey Belt to be applied in such a way that noticeably extending the footprint of a settlement automatically took a site outside of the definition. The Oxhey Lane has already been penetrated by

development – in particular the care home. It is not an absolute hard boundary, as Ms Fitzgerald conceded in XX. The case officer was right to opine that the development *“would be viewed as a continuation of Carpenders Park and is significantly contained”* and that it *“arguably could be viewed as the next logical extension of Carpenders Park”*. Any suggestion that the development of the site would be incongruous also sits uneasily with the Ministerial direction to include it as a proposed allocation in the Regulation 19 emerging local plan, based upon an informed evaluation of the evidence base for the plan (see CD4.17 and CD 4.19). Ms Fitzgerald accepted in XX it was much more plausible that the Minister considered, having regard to that evidence base, the site’s development would not be incongruous.

ii) NPPF paragraph 155(c)

52. Paragraph 155(c) requires that *“The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework.”*
53. The Council’s case on this is both confused and confusing.
54. The putative reasons for refusal do not contain any allegation that the site is not in a sustainable location. There are clear development plan policies relating to locational sustainability – see Policy CP1(l) and CP10 (CD 3.3, pages 27 and 52-53 respectively). These give local effect to NPPF paras. 110 and 115, as Ms Fitzgerald acknowledged in XX.
55. The first putative reason for refusal – which is the in-principle reason (the second concerning the then-lack of a signed s.106 agreement/undertaking) – does not allege any breach of Policies CP1 or CP10.
56. Article 35(1)(b) of the DMPO that *“where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying*

all policies and proposals in the development plan which are relevant to the decision”.

57. As Ms Fitzgerald accepted in XX, the requirements for putative reasons for refusal cannot sensibly be any less than for actual reasons for refusal, otherwise LPAs would benefit from failing to comply with their statutory duties to determine applications in time.
58. It therefore follows, as she also agreed in XX, that Committee Members must have considered that the principle of the site’s development would be consistent with CP1 and CP10, and thus NPPF paragraphs 110 and 115 to which they give local effect.
59. The Council’s reliance on NPPF paragraph 155(c) at this inquiry – which as you will recall was fleetingly trailed in its original statement of case which following the first CMC was then subsequently fleshed out – is a contrived retrofit. There is no evidence that the points made by Ms Fitzgerald on this subject were in Committee members’ minds. In XX she conceded that she had not taken the trouble to check by asking them.
60. Faced with the fundamental difficulty of her position in XX, she pivoted away from an in-principle concern about the site’s sustainability and instead suggested her concerns fell within the second reason for refusal, which was expressed to relate to the then-lack of a signed s.106 agreement/undertaking, and in particular what she considered to be an insufficiently evidenced contribution towards an enhanced bus service.
61. In this respect too, there is no evidence this was a point in Committee Members’ minds. This too is an after the event, contrived retrofit by Ms Fitzgerald.
62. In any case, it does not bear on the NPPF paragraph 155(c) test which asks if the *site* is in a sustainable location. Ms Fitzgerald now concedes that it is – her point is simply that the s.106 bus contribution is inadequate (albeit

she has refused to provide alternative wording to the relevant part of the planning obligation, despite accepting in XX that *“there is a form of s.106 that deals with my concerns”*).

63. Further, and in any event, it is a fundamentally bad point for the following ten reasons.
64. **First**, it contradicts the reasoned view of Hertfordshire County Council (“HCC”) as local highway authority. See the Transport Statement of Common Ground agreed with them (CD6.7). Unlike HCC and Mr Hamshaw, whose evidence for the Applicant on this subject should be accepted, Ms Fitzgerald has no professional qualifications or expertise in highways and transportation.
65. **Secondly**, it is plainly inconsistent with the Minister’s evidence-based direction to the Council to allocate the site.
66. **Thirdly**, Ms Fitzgerald did not contest the Applicant’s evidence in relation to accessibility by bike. As to this see Mr Hamshaw’s Appendices, Figure 4.2 which shows the range of destinations within a reasonable cycling distance – these include the major employment destination of Watford as well as Carpenders Park station (only 4-5min away).
67. Mr Walpole’s suggestion that part of the gradient along Carpenders Avenue was above the LTN 1/20 guidelines was without merit given:
 - a. LTN 1/20 is principally focused on new cycle provisions and acknowledges that cycle routes along existing roads and paths will usually have to follow the existing gradient.⁶
 - b. It is not part of the development plan or national planning policy. As Inspector Nunn held in the Sarratt decision, it is not a touchstone of whether people will in fact cycle a particular route

⁶ See ID17, paras. 1.3.1 and 5.9.8.

(see CD 5.1 paragraph 52).

- c. We are talking here about a 4-5 minute cycle ride between the site and the centre of Carpenders Park. The Tour de France this is not.

- 68. **Fourthly**, the Planning SOCG signed by Ms Fitzgerald on behalf of the Council stated that the station was also within a walking distance of the site (CD 6.4 paragraph 4.5). From the station, destinations from London to Watford can be directly reached. Table 4.4 of the Transport SOCG shows that this means that 56.7% of workplace destinations can be reached by a combination of walking and taking the train, or cycling and taking the train.
- 69. **Fifthly**, in XX Ms Fitzgerald accepted – rightly – that all the destinations in the centre of Carpenders Park were within a reasonable walking distance. Yes, the site is further away from them than the existing housing nearer the centre – that is inevitable for an edge of settlement development and if the inevitable features of edge-of-settlement development were insufficient for NPPF paragraph 155(c) purposes, Grey Belt policy would be self-defeating.
- 70. This is the answer to the concerns expressed – largely by the Rule 6 Party though Mr Walpole – about some walking distances being over the 800m recommended in Manual for Streets. As Inspector Young said in the Possingham (CD 5.12, paragraph 65) and Horsham (CD 5.11, paragraphs 30 and 35) decisions, the reasoning of which we commend to you, this figure is not a hard and fast rule; a realistic and proportional approach must be taken to such guidance, recognising – as the final sentence of NPPF paragraph 115 does – that sites on the edge of a settlement should not be judged by the same standards as central London.
- 71. **Sixthly**, there are two bus services per hour in either direction from the existing bus stop which is around 800m from the centre of the residential

area within the proposed development.⁷ Ms Fitzgerald accepted that for most residents this would be within a reasonable walking distance.

72. **Seventhly**, Ms Fitzgerald's case morphed during XX (and thereafter in XX by Ms Sargent of Mr Hamshaw) into a concern that was either solely or principally about those with impaired mobility, in particular the residents of the C2 element of the proposed development. This overlooks that the s.106 provisions relating to the C2 units envisage that they would be provided with bespoke transport (as is commonplace for care homes and many other senior living developments). Further, there is nothing in NPPF paragraphs 110 or 115 which require that every single occupant has to have the same propensity to use sustainable transport means. That would be unrealistic. In planning as elsewhere, the perfect is the enemy of the good. What is clear is that there are there are a wide range of opportunities for sustainable transport means on foot, by bike, by bus and by train which it is highly likely that many residents will take up. It must also be borne in mind that trips by electric vehicle and car-sharing are also within the definition of sustainable transport, and these will be just as available to those who have impaired mobility as they will be to those who do not.
73. **Eighthly**, against that background it is plain as a pikestaff that the site is in a sustainable location even before one comes to consider the proposed new bus service. If this site were to fail NPPF paragraph 155(c), there would be little or no hope for many good Grey Belt schemes up and down the country – seriously curtailing the effectiveness of the Government's flagship planning reform.
74. As Mr Hamshaw confirmed in response to a question from the Inspector, the bus service is not being put forward on the basis that it is necessary to make the site and development sustainable within the meaning of NPPF

⁷ See the Transport SOCG (CD 6.7 para. 3.1.10)

paragraphs 110 and 115. It is being put forward in order to “*maximise*” sustainable transport solutions, in the context of a location that is already highly sustainable. It is the icing on the cake, not the cake itself.

75. **Ninthly,** Ms Fitzgerald’s concerns about viability and variations to the route are misconceived.

- a. The professional judgment of HCC’s Public Transport Officer (with whom Ms Fitzgerald did not take the trouble to engage before preparing her evidence) is that the £633,558.69 financial contribution to be provided by way of planning obligation – which is, after all, an obligation in an s.106 agreement *with HCC* and an obligation *of which HCC is itself the beneficiary* – will be sufficient to make the service viable after 5 years *having regard to project costs and revenues*. HCC’s Public Transport Officer is in the best possible position to make that judgment – and certainly a far better position than Ms Fitzgerald.
- b. Ms Fitzgerald appeared in XX to accept that judgment but contend that it failed to take into account potential changes to the route which would make it unviable. That is a far fetched suggestion. Ultimately the decision on the route will be for HCC and they would hardly be inclined to make a change that would render the route unviable. But the fundamentals of the route- the ‘loop’ shown in Image 3.2 of the Transport SOCG (CD 6.7) are obvious and it is clear that any refinements would be relatively minor and highly unlikely to affect viability.
- c. The contribution will be index-linked which will mean that macro-economic changes will be reflected in the ultimate sum paid.
- d. Ultimately, if – as HCC as local highway authority agree - the

service would be viable after 5 years, then whoever is at the time operating the bus services in the locality would have a commercial incentive to take it on subsidy-free. Ms Fitzgerald ultimately accepted this in XX.

76. **Tenthly**, as Ms Fitzgerald acknowledged in XX, her position in relation to the application is irreconcilable with that taken by the Council's Planning Committee in relation to the 96 dwelling scheme at Woodlands Cottage which was the subject of a resolution to grant earlier this year, with no requirement for a new bus service and on the basis of a finding of sustainability despite being a longer (23 minute) walk to the nearest station. See Mr Allin's proof at paragraphs 6.20-6.22 and the plan at his Appendix 7 showing the relative position of the two sites.
77. The Rule 6 Party's over-reliance in closing submissions (paragraph 30 and following) on the DfT Connectivity Tool overlooks Mr Walpole's acceptance in XX that the Connectivity Tool was only a high level starting point and no substitute for site specific analysis.

iii) Conclusion

78. For all these reasons, we invite you and the Secretary of State to conclude the proposed development is not inappropriate development in the Green Belt, by virtue of the Grey Belt exemption under NPPF paragraph 155.

III. VSC

79. Even if that conclusion were not correct, and the application were to be treated as being for inappropriate development, the VSC case is truly compelling.
80. Indeed, the starting point is that Ms Fitzgerald acknowledged in XX that even taking the Council's case at its very highest, the VSC analysis was "*finely balanced*" and that the benefits did outweigh the impacts, just not

quite “*clearly*” enough. On that analysis, even if only small adjustments were made to the Council’s weightings, the scales would tip in favour of approval on VSC grounds.

81. The position is, however, much clearer than that. The range and weight of considerations in favour of granting permission is both broad and powerful. These are set out in full in sections 6-8 of Mr Allin’s proof of evidence, to which reference should be had and which was largely unchallenged in XX.
82. The proposed development’s provision of 256 dwellings will make a substantial and desperately needed contribution towards addressing the dire, chronic and worsening 5YHLS and HDT shortfalls (discussed in Section I above), the position in relation to which has got worse since the Sarratt decision (CD 5.1) in which then-prevailing position was a key factor in the Inspector’s conclusion that VSC existed in that case.⁸
83. The provision of 128 desperately needed affordable homes is over **40 times** the amount of affordable homes delivered *across the whole District* in 2023/24, which as noted in the Planning SOCG (CD 6.4) totalled only 3 – a truly appalling statistic. But of course it is much more than just a statistic. It reflects the Council’s epic failure to provide for the real needs of real people. Since monitoring began, only 23% of total housing delivered in the District have been affordable homes – orders of magnitude less than the 45% development plan target in Policy CP4 of the Core Strategy (PSOCC para. 4.10). Ms Fitzgerald agreed in XX that the affordable housing situation in the District was “*dire*”.
84. The proposed custom and self build homes will meet an agreed significant unmet need in a District which has *never* delivered a *single* custom/self build home despite the long-standing policy and legal

⁸ See CD 5.1, paragraph 79 “*a very serious shortfall*”; paragraph 95 “*overwhelming deficiency... needs to be addressed as a matter of urgency, rather than waiting for the adoption of a new local plan*”.

requirements in relation to such housing: see the Planning SOCG (CD 6.4) paragraph 4.15 and the Sarratt decision (CD 5.1) at paragraph 85, following which there have been two more years of non-delivery – another respect in which the situation has got worse since that appeal was allowed on VSC grounds.

85. The Housing with Care C2 element of the proposed development will meet what the PPG describes a “critical” need for housing for older people and a “crucial” need for appropriate housing for people with disabilities. See paragraph 63-001 and 63-002 of the PPG. As Ms Fitzgerald agreed in XX, there is a significant shortfall of this kind of accommodation in the District too (see Mr Allin’s proof paragraphs 4.18-4.25 which were not challenged in XX).
86. The Children’s Home would provide appropriate accommodation for some of the most vulnerable people in society. Such developments are described as “vital” in the applicable Written Ministerial Statement (CD 4.15). The effect of the development on the children to be accommodated in the home would be truly transformative. It would be perverse to downplay the weight to be given to this, as Ms Fitzgerald does, based upon the number of bedrooms provided – each one meets a critical unmet need, and as Mr Allin explained in evidence in chief these kinds of developments are typically small scale (and HCC in fact resisted the Applicant’s offer of an additional dwelling for a children’s home).
87. The economic benefits have been clearly evidenced (See CD 1.38 Annex 2, updated in Mr Allin’s Appendix 9) – the analysis of the Sarratt Inspector (CD 5.1 paragraph 92: “significant weight”; “should not be downplayed”) applies here too, but with added force given that the proposed development here is over two and a half times the scale of what he permitted in that case.
88. The improved connectivity and enhanced safety of the proposed

pedestrian crossing at Oxhey Lane is a material benefit which Ms Fitzgerald accepted in XX had been wrongly left out of account in her and the Council's analysis.

89. In XX, Ms Fitzgerald abandoned the suggestion in her proof that the "significant weight" which NPPF paragraph 156 requires to be given to compliance with the Golden Rules somehow involves impermissible double counting.
90. The Secretary of State's direction if a material consideration, as it means that the site has the status of a Regulation 19 proposed allocation.
91. The impacts are well contained and localised. Yes, there are some harms to the landscape and green belt, as is inevitable in relation to a greenfield development. But in the context of such colossal unmet needs and a total failure of local plan-making to address those needs, green field developments need to come forward now in order to start meeting those needs. They cannot be and will not be met on brownfield sites alone. Given that the District is washed over by Green Belt, some Green Belt is going to have to give way – as the Sarratt Inspector recognised.
92. Ms Fitzgerald herself agreed on behalf of the Council in XX that the extent of housing need in the District was such that unallocated greenfield developments needed to be permitted now, including Green Belt sites on a VSC basis , in advance of the local plan. This site and this scheme is a paradigm example of such a case. *If not here, then where?*
93. To the extent that anything turns on the difference between Mr Allin's and Ms Fitzgerald's approach to the different gradings of weight (see CD 6.17), Mr Allin's should be preferred. It is consistent with that of Inspector Nunn in allowing the Sarratt appeal in this District on a VSC basis only just over two years ago (CD 5.1, see eg. paragraph 81) as well as that of the Inspector in the recent Camelot decision (CD 5.13, paragraph 9). Ms

Fitzgerald's narrower scale risks downplaying the weight given to the higher order benefits.

IV. HIGHWAY SAFETY

94. Highway safety was rightly not part of the Council's putative reasons for refusal. The local highway authority, HCC, has confirmed in the Transport Statement of Common Ground (CD 6.7) its view that the access arrangements for the proposed development would be safe. Mr Hamshaw's written and oral expert evidence corroborated that view.
95. The counter-analysis by Mr Walpole for the Rule 6 party is centred on his allegation that HCC has applied the wrong design standard, Manual for Streets 2 ("**MfS2**"), in appraising the application. He alleges that HCC's own design guidance, *Place & Movement Planning and Design Guidance for Hertfordshire*, requires 120m forward visibility (longer than a football pitch, as you noted during his evidence) in accordance with the DMRB.
96. At paragraph 7.25 of his proof, Mr Walpole accepted that "*deciding which set of design standards is appropriate is a matter of judgment*". As the statutory consultee on highways, the expert view of HCC as local highway authority must be given great weight;⁹ all the more so when (as here) they are applying their own guidance. It is striking, therefore, that Mr Walpole did not bother to contact HCC to ask them why they judged that MfS2 was the right design standard in this context. That casts doubt on the objectivity and reliability of his analysis.
97. Mr Hamshaw's rebuttal and oral evidence provided a convincing explanation of the position. Speeds on the Oxhey Lane are lower than 40mph, meaning that in accordance with Table 10.1 of MfS2, the use of

⁹ See *Ashdown Forest Economic Development LLP v. Secretary of State for Communities and Local Government* [2014] EHC 406 (Admin) per Sales J. at para. 106, "*a decision-maker is entitled, indeed obliged, to give the views of statutory consultees... great weight*", citing the earlier judgment of Beatson J. in *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), at para. 72

MfS2 is appropriate. This is also consistent with the Council's own design guide which lists MfS2 as the appropriate standard for a P1/M2 road which this is (see pdf pages 98-99 of CD1.42, the Transport Assessment). Whilst the guide also refers to a 120m forward visibility, that must be in error given the acceptance by the guidance that MfS2 is appropriate for such a road (as Mr Walpole accepted it ordinarily would be), and given that the application of MfS2 produces a 52m forward visibility requirement with which the application complies.¹⁰

98. It is also notable that HCC undertook their own Road Safety Review as part of their review of the Road Safety Audit (CD 1.70, Appendix D) – they concluded the risk of a reduction in the level of road safety would be “Low”.
99. It is therefore untenable to conclude that there would be an “*unacceptable impact on highway safety*” for the purposes of NPPF paragraph 116. Tellingly, Mr Walpole in his proof does not actually allege a conflict with this provision notwithstanding his (misplaced) observations in relation to highway safety. Even taking his analysis at its highest therefore, it does not justify the refusal of planning permission.

V. PLANNING BALANCE

100. Whether by virtue of the Grey Belt exemption under NPPF paragraph 155, or by virtue of VSC under NPPF paragraph 153, the application is in accordance with national policy on Green Belt.
101. There will be no impacts on Footnote 7 assets and areas of importance (other than Green Belt) and therefore there is no NPPF paragraph 11(d)(i) “*strong reason*” for refusing the application.
102. The tilted balance under NPPF paragraph 11(d)(ii) is therefore engaged.

¹⁰ See the Transport Assessment (CD 1.42) paragraph 4.2.11.

Planning permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. As noted above, the Council itself accepts, through the evidence of Ms Fitzgerald, that the benefits of the development outweigh the impacts. That concession was rightly made, for the reasons set out above in relation to VSC and for the reasons set out in Mr Allin's evidence (see in particular chapters 6-8 of his proof). The Rule 6 party offered no evidence on the planning balance. The only evidence before the inquiry therefore is that the proposed development is net beneficial.

103. Finally, it is to be noted that the Council and the Rule 6 party accept that their landscape concerns would not sustain a standalone reason for refusal. As the photomontages in Mr Evans' evidence show (see in particular the 15 year images in his rebuttal appendices), the development once it is built out and its landscaping is established will read as a continuation of Carpenders Park, as the case officer himself noted.

VI. THE MORTGAGEE EXCLUSION CLAUSE ("MEC")

104. This issue does not go to the principle of whether the appeal should be allowed or dismissed, but the terms of the s.106 obligation in relation to affordable housing, which has been drafted in such a way as to let the Secretary of State decide between the parties' competing cases, informed by your recommendation.
105. As you have heard, the issue as to what is the appropriate duration of the moratorium period of the MEC – 3 months as contended for by the Applicant (with the support of the National Housing Federation ("NHF"),¹¹ or 5 months as contended for by the Council – is one of wider application to other cases, and as such it is of real importance for the Secretary of State's decision to be analytically rigorous: whichever way he

¹¹ See Mr St John Williams' Rebuttal Proof, Appendix 1 – and in particular the proposed standard clause in p.2.

goes on this issue will undoubtedly influence future decisions nationwide both at local authority level and on appeal.

106. It is crucial to put the issue in context. Under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ("**the CIL Regs**") and paragraph 58 of the NPPF, the Council's version of the MEC can only be insisted upon in the Secretary of State's decision if it is "*necessary to make the development acceptable*". In other words, if its absence would in itself have justified refusal of planning permission (as accepted by Mr Pinnock in XX).
107. That issue itself needs to be put into context. We will, if this is to be a live question at all, be in a situation where the Secretary of State has decided that – subject to the MEC point – he is inclined to allow the appeal on the basis that there is no NPPF paragraph 11(d)(i) "*strong reason*" for refusing permission on Green Belt grounds (whether due to the Grey Belt exception or due to VSC) and that then proceeding to apply the tilted balance under NPPF paragraph 11(d) the adverse impacts of granting permission do not "*significantly and demonstrably*" outweigh the benefits of doing so. This is the prism through which it is to be judged whether the development is "*acceptable*".
108. If the Council's case on the MEC moratorium period is to be accepted, it must follow that the difference between 5 months and 3 months tips the balance from a situation where the adverse impacts of granting the permission do not "*significantly and demonstrably*" outweigh the benefits of doing so, to one where they do.
109. The onus of proof in this respect is firmly on the Council, and they called no evidence on this decisive point. Mr Ralton confirmed in XX that he was only giving factual evidence, and Mr Pinnock was not a planner and did not purport to give planning evidence (as confirmed in XX). Ms Fitzgerald offered no written or oral evidence on this. Mr Allin, by contrast, did (see

paragraph 7.7 of his proof, his EiC and RX).¹² It must be stressed, however, that even if he had not given any evidence on the point, the evidential onus under CIL Reg 122(2) read in conjunction with NPPF paragraph 11(d) is firmly on the Council – their lack of any planning evidence on why their moratorium period meets the CIL Regs test applying NPPF paragraph 11(d) is a fundamental and fatal flaw in their case.¹³ There is, put simply, no case to answer on the key overarching test which the Council needs to satisfy in order to justify the moratorium period it advocates.

110. Further, and also fundamentally, where NPPF paragraph 11(d) is engaged, there can only be a sound basis for refusing planning permission where the consequence would be *real world* rather than *theoretical* harm. This is where the difference of expertise between Mr St John Williams and Mr Pinnock matters. Mr Pinnock is a well regarded planning solicitor and draftsman of s.106 obligations. But unlike Mr St John Williams, he has no expertise in the financing and regulation of registered providers (“RPs”). This matters, because Mr St John Williams explained convincingly from his perspective how in practice it is highly unlikely that a 5 as opposed to a 3 month moratorium period would make any real world difference. Mr Pinnock accepted in XX that he was unable to provide expert evidence to the contrary, and acknowledged that it appeared “*unlikely*” that the longer period would make a real world difference. The key reasons for this are as follows (see Mr St John Williams’ proof and rebuttal for the full analysis in his own words):

¹² The Inspector offered the Council the opportunity to recall Ms Fitzgerald on this point following Mr Allin’s evidence; tellingly, that offer was declined.

¹³ This is a complete answer to the (in any event factually incorrect) submission at paragraph 54.3 of the Council’s closing submissions that “*The Applicant cannot fairly criticise the Council for having (allegedly) failed to undertake analysis that it has not properly performed itself.*” The onus of proof is on the Council to justify the planning obligations it contends for.

- a. The social housing market has historically been very stable, with only a small number of RPs experiencing serious financial difficulty.
- b. In those latter cases,¹⁴ the regulatory framework operated by the Regulator for Social Housing (“**RSH**”), as outlined at paragraphs 26-32 and 39 of Mr St John Williams’ proof has readily found a new RP to take on the assets of the foundering RP.
- c. There are two stages to the RSH’s powers. First, there are the ‘soft powers’ summarised at paragraph 39(a) of Mr St John Williams’ proof (facilitated by the extendable 28-day statutory moratorium on any person taking steps to enforce its security over the RP’s assets). If those soft powers do not work, the RSH can next deploy its ‘hard power’ summarised at paragraph 39(b) namely a housing administration order under the Housing and Planning Act 2016 (“**the 2016 Act**”) which comes with a statutory objective under s.98 of the 2016 Act of ensuring that the RP’s social housing remains in the regulated housing sector.
- d. To date, the RSH has been able to resolve all cases using its soft powers. There has not yet been any case where it has needed to use its hard power. That shows that the regulatory system is working and is resilient, with more than one solid line of defence against social housing leaving the regulated housing sector in the event of an RP experiencing financial difficulties.

14 The House of Commons report cited by Mr Pinnock about the risk of an uptick in such instances does not assist the Council, as it does not suggest that the *nature* of such instances will change such that the regulatory framework will no longer be capable of satisfactorily dealing with them.

- e. In practice, the MEC would only be relevant after both those lines of defence had failed. A situation which in the decades since the 2016 Act was passed has never come close to happening (the first line of defence having persistently proved sufficient in all cases).
- f. One then needs to ask, in a (so far unprecedented) situation where the RSH fails to keep the social housing in the regulated housing sector using both its soft powers and its (statutorily underpinned) hard power, will then the receiver to whom the MEC applies be able to find a RP transferee whom the RSH with all its stature and power has been unable to find? One can understand why it might be accepted (albeit perhaps rather charitably) that, as a belt and braces measure, three further months of 'shaking the tree' (this time by the mortgagee or receiver, after RSH has exhausted its powers) is unobjectionable – but if no fruit has fallen out by that stage, coming after the RSH itself having shaken the tree to death – it is simply unrealistic to think that something will dramatically change by continuing to shake the tree for two further months. The advantage of doing so is not a *real world* advantage; it is purely *theoretical* at best (even then, the theory is itself unsound).

111. It is therefore plain that irrespective of whether, and if so to what extent, the Council's 5 month moratorium clause would undermine, and is already undermining, the timely delivery of desperately needed affordable housing (and indeed housing generally) in the District, the clause serves no tangible real world benefit and certainly not one of such importance as to make a difference to whether, in the context of the tilted balance, the adverse impacts of granting permission *significantly and demonstrably* outweigh the benefits of doing so.

112. There is therefore simply no case to answer for the Applicant on the MEC issue. The Council's case does not even get off the ground.
113. But even if that is wrong, the real world impact of the 5 month moratorium would do more harm than good to the supply of affordable housing. Any benefit it would have would be limited and largely theoretical at best (for the reasons outlined above). The impact, however, would be far more real and direct.
114. The context for this balance of risk and reward is that the ultimate goal on both sides of the debate is to maximise the stock of affordable housing. That begs the question: which of the two competing MEC drafts will do that? For the reasons given above, the Applicant's version is highly unlikely to have any real world reductive effect on the affordable housing stock in the District. The evidence before the inquiry strongly indicates, however that the Council's version would – in the real world - at best delay and at worst frustrate the much needed augmentation of the District's affordable housing stock.
115. The parties disagree as to the extent of that effect. But in the light of Mr Stevenson's and Mr St John Williams' evidence it cannot sensibly be denied that there would indeed (to a greater or lesser degree, depending on whose evidence you accept) be such an effect and that it would be far more tangible in the real word than the theoretical risk of a loss of affordable housing if a 3 month rather than 5 month moratorium period were preferred.
116. In fact, the deleterious effect of the 5 month moratorium period has been significantly downplayed by the Council, as Mr Stevenson's and Mr St John Williams' evidence has shown.
117. With the greatest possible respect to Mr Ralton, his factual evidence for the Council in this respect can only properly be described as pitiful. In

relation to each of his points, he readily accepted in XX that the narrow framing of the questions he addressed, and/or his answers to those questions, meant that his evidence did not present a factually accurate and complete picture. His evidence was wholly unconvincing and should be given no weight. Tellingly, the factual veracity of Mr Stevenson's rebuttal of it was not challenged in XX.

118. Mr Stevenson's factual evidence was, by contrast, carefully researched and convincingly presented. It demonstrated that all but one of the approved RPs listed in the Council's SPD would (and indeed could) not take on a development with a more than 3 month moratorium clause. The one partial exception was Chime (incorporating the RPs formerly known as WHCT and Thrive), but even they described such a clause as "*defective*" and were unsure about taking on a "*larger*" site subject to such a clause – a comment that should be viewed in the context of the proposed development being considerably larger than the largest site they have to date taken on (see Mr Stevenson's proof paras. 7.7-7.8). It would in any event be both unworkable and wrong in principle for one RP to have a monopoly on affordable housing provision in the District (all the more so given their comfy relationship with the Council: see Mr Stevenson's proof para. 7.4).

119. The reasons given by the RPs in response to Mr Stevenson's questionnaire (see the emails in Appendix 1 to his proof) consistently make clear that the reason underpinning their concerns about a more than 3 month clause was due to the effect on their funding arrangements. Mr St John Williams gave detailed and convincing expert evidence (which Mr Pinnock, with his different expertise, was unable to gainsay – as he accepted in XX) as to the rationale for those concerns: namely that a more than 3 month moratorium clause, beyond the industry practice as recognised in the NHF standard clause, undermined the Market Value Subject to Tenancy approach to valuing the asset(s) in question, and risked them having to

be valued on an Existing Use Value basis on markedly less favourable terms (which would lead them to invest elsewhere). In this context it is to be noted that the Council's own Affordable Housing SPD notes that the purpose of a MEC is *"to facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment"*. The evidence before the inquiry has shown that the Council's insistence on a 5 month MEC moratorium runs contrary to *its own* stated purpose in accepting the principle of a MEC. As Mr St John Williams explained, it is also contrary to the standard clauses prepared by both the HBF and the GLA, prepared by leading industry experts.

VI. CONCLUSION

120. For these reasons, as set out more fully in the Applicant's evidence, we respectfully invite you to recommend, and the Secretary of State to decide, that the application be allowed and planning permission be granted, and that the s.106 obligations including the MEC should be in the form advocated by the Applicant.
121. A costs application will follow in accordance with the Inspector's timetable, but given these closing submissions will be reported to the Secretary of State, we conclude by reiterating what was said in Section I of these closing submissions – the only way that this first of 150+ dwelling call-in cases can deliver the message that the new regime for such cases is intended to deliver, is for the appeal to be allowed along with a full award of costs against the Council, whose case in this inquiry has been an unreasonable cocktail of analytically threadbare arguments and a contrived retrofit of points that were not in Committee Members' minds. The Secretary of State will not get a better chance to send a clear message to Planning Committees up and down the country that they need to up their game in the public interest.

122. If you let this Planning Committee off the hook for defying your Regulation 19 direction and refusing permission in defiance of their case officer's recommendation and counsel advice, the only message that will send is that the system can still be gamed to the detriment of the real people in desperate need of homes whose needs have been chronically under-provided for.
123. Secretary of State, this is your golden chance to break the mould. *If not now, then when?*
124. We respectfully invite you to grant permission with a full award of costs.

CHARLES BANNER K.C.

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

17th July 2026