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## Appeal Decision

Inquiry held on 3, 4, 5 and 10 August 2021

Site visits made on 13 July and 12 August 2021

**by Peter Rose BA MRTPI DMS MCMi**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> September 2021**

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**Appeal Ref: APP/X1925/W/21/3273701**

**Land south of Heath Lane, Codicote SG4 8YL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ashill Land Ltd against the decision of North Hertfordshire District Council.
  - The application Ref: 18/02722/FP, dated 8 October 2018, was refused by notice dated 22 March 2021.
  - The development proposed is 167 dwellings (Use Class C3) and associated works including formal open space, internal road network, landscape enhancement and creation of accesses from Heath Lane and St Albans Road; and the demolition of 66 St Albans Road.
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### Decision

1. The appeal is allowed and planning permission is granted for 167 dwellings (Use Class C3) and associated works including formal open space, internal road network, landscape enhancement and creation of accesses from Heath Lane and St Albans Road; and the demolition of 66 St Albans Road, at Land south of Heath Lane, Codicote SG4 8YL, in accordance with the terms of the application Ref: 18/02722/FP, dated 8 October 2018, and subject to the conditions set out in the attached Schedule.

### Application for costs

2. An application for costs has been made by Ashill Land Ltd against North Hertfordshire District Council. This application is the subject of a separate Decision.

### Preliminary matters

3. The Council withdrew its second reason for refusal relating to prematurity during the Inquiry. It explained that, in the light of the evidence, the harm arising in that regard did not attract so much weight that it would in and of itself justify a refusal of planning permission. It remains the authority's position that some harm would nonetheless result from the scheme by reason of prematurity.
4. The Council advised the Inquiry that its third reason for refusal (the absence of a completed section 106 agreement) would be satisfactorily addressed once the then draft agreement had been executed. The appeal is now supported by a

completed planning agreement (the planning agreement) to that effect made pursuant to section 106 of the Act and other legislation dated 26 August 2020.

5. A request was made in evidence from Codicote Parish Council that the appeal decision should be deferred pending receipt of the Local Plan Inspector's report relating to main modifications to the emerging local plan (the ELP)<sup>1</sup>. I deal with this matter as part of my consideration of prematurity within the main issues and in my conclusions.

### **Main issues**

6. The main issues are:

- possible implications for the Green Belt and, in particular, whether any potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, would be clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development;
- possible implications of the proposal relative to progress of the ELP and, in particular, whether a grant of permission would undermine the plan-making process.

### **Reasons**

#### ***Green Belt***

##### *The appeal site*

7. The appeal site comprises some 10.78 hectares of agricultural land to the south-west of the village of Codicote. The land is an arrangement of individual fields, distinguished by various enclosures, including footpaths, hedgerows and other planting.
8. The site is bounded by existing residential properties and by Codicote Church of England Primary School to the north-east, and by residential properties to the east and south. The appeal site inclines gradually away from its higher northern/central parts down towards the south-west and further open land beyond.
9. Other than No 66 St Albans Road and the adjacent footpath, the site is located within the Green Belt.

##### *Inappropriate development*

10. The National Planning Policy Framework (the Framework) advises that construction of new buildings is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There is no dispute that the scheme involves inappropriate development.

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<sup>1</sup> Local Plan 2011-2031 Proposed Submission October 2016  
Proposed Submission Local Plan Incorporating The Proposed Modifications

*Openness of the Green Belt*

11. The Framework defines one of the essential characteristics of the Green Belt to be its openness. There is no formal definition of openness but, in the context of the Green Belt, it is generally held to refer to an absence of development. Openness has both a spatial (physical) dimension, and a visual aspect.
12. Spatially, the scheme would result in a significant reduction in existing openness simply by dint of an extent of built development involving 167 dwellings.
13. Visually, the effect of the development would be shaped by a more complex combination of factors.
14. The site lies within the Codicote Plateau Landscape Area (Area 205) as defined by the North Herts Landscape Study (Character, Sensitivity and Capacity) (the Study). Area 205 is described as a gently rolling upland landscape plateau defined to the south and west by the River Mimram. The Study identifies large, regularly shaped fields mainly used for arable production but with parcels of grazing land and paddocks adjacent to Codicote.
15. The eastern side of the appeal site is more physically enclosed by the adjacent built forms of the village. The pattern of more intimate and relatively enclosed fields is reflective of the Study. Allied to its immediate village-edge character, this part of the site contrasts with the more open, larger scale countryside to the west. The surrounding topography and the composite nature of the fields and enclosing built development to the east also limit an immediate visual appreciation of the appeal land as one uniformly open site.
16. These characteristics lead me to concur with the Council's assessment made as part of its ELP evidence base.<sup>2</sup> This identifies the visual openness of the site to be mixed, but the physical openness to be high.
17. The proposed houses would be set away from the site's western boundary and proposed planting along the southern and western edges characteristic of the Landscape Area would limit to some degree exposure of built form from outside. The extent and quality of landscaping proposed within the site would be significant. Some 4.4 hectares of the site would comprise landscaped public open space absent of significant built form (some 41%).<sup>3</sup>
18. The impact physically and visually would be most evident in the immediate vicinity of the site at its eastern side, but less so in more distant views from the west and which would comprise relatively glimpsed exposures of upper levels of dwellings once proposed landscaping becomes established.
19. Spatially, the existing completely open character of the site, notwithstanding the enclosed and sub-divided character of individual fields, would be lost. The effect of mitigation would be to reduce the visual impact of built form as landscaping becomes established, but the spatial implications would not be similarly offset. The footprint of built form would be a permanent feature and the accompanying spatial impact upon openness would not reduce over time.
20. Visually, the proposed planting would be of merit in itself and would strengthen the characteristic vegetation and planting of the surrounding landscape.

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<sup>2</sup> Appendices to North Hertfordshire Local Plan 2011 - 2031 Green Belt Review Update 2018

<sup>3</sup> See Figure 2 of Mr Kindred's proof

Nevertheless, its primary purpose would be to mitigate the impact of built form and to offset the loss of countryside, and it falls to be assessed in that context.

21. I find the visual impact upon openness would vary from moderate adjacent to the existing settlement, to more significant in its more open character to the west, and this would reduce over time.
22. Taken together, I assess the overall harm to the openness of the Green Belt to be in the range of moderate-significant.

*Encroachment and other Green Belt purposes*

23. One of the Framework's defined purposes for the Green Belt is to safeguard the countryside from encroachment. No conflict has been identified with other purposes.
24. Built form would replace existing open countryside and encroachment would thereby be incurred. Given the site and scheme characteristics described, and particularly the immediate relationship to the existing built form of the village, I agree that such harm would be moderate consistent with Council's ELP evidence base.

*Summary of Green Belt harm*

25. The scheme would incur definitional harm as inappropriate development and would impose various levels of moderate-significant harm through loss of openness and through encroachment.
26. To that extent, the scheme would thereby conflict with Policy 2 of the Local Plan<sup>4</sup>. Amongst other things, this seeks to ensure that uses of land in the Green Belt will be kept open in character. Defined exceptions where planning permission will be granted, however, include proposals where very special circumstances apply.
27. I return to an assessment of very special circumstances as further relevant to Policy 2, and as also reflected in the Framework, as part of my planning balances to follow, and to be made in the context of all other relevant factors.

**Prematurity**

*The Council's objection*

28. The ELP is now at a very advanced stage of the local plan-making process. The main modifications consultation process has been completed and the Inquiry was advised that the Inspector's final report was anticipated in early Autumn.
29. The Council is concerned that it is not known what the ELP Inspector is going to say when he reports. The authority considers it possible that, in light of the consultation that has taken place on the main modifications, the Inspector will decide not to recommend that the ELP be adopted. It further maintains there are unresolved objections and, irrespective of whether opposition to a draft allocation persuades the local planning authority to change its own mind, opponents should still be given a fair opportunity to persuade an examining Inspector to uphold their concerns.<sup>5</sup>

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<sup>4</sup> North Hertfordshire District Council District Plan No.2 with Alterations Originally adopted April 1996, Saved policies under Planning and Compulsory Purchase Act 2004 Written Statement September 2007

<sup>5</sup> Paragraph 48b) of the Framework is submitted to apply

30. In cross-examination, the Council's witness clarified its concerns around prematurity to relate to loss of public confidence if a key site-specific decision were to be taken in advance of plan adoption. Further, those concerns were confirmed as relating to Codicote and not to the ELP as a whole.

*The current status of the ELP*

31. The appeal site is proposed for housing development in the Council's ELP. Policy CD5 identifies a possible development of 140 homes as part of development also accommodating expansion of the adjacent Codicote Church of England Primary School on Land south of Heath Lane.
32. The allocation forms part of the authority's strategic approach to meeting its future housing needs. This is set out in Policy SP8 of the ELP which commits the authority to support housing growth in the period 2011-2031 by releasing sufficient land across the District to deliver at least 11,600 net new homes for North Hertfordshire's own needs.<sup>6</sup>
33. The Inquiry was informed how, at the end of the pre-Christmas 2020 ELP hearings, the Local Plan Inspector discussed the next steps. The Inspector advised that the Council could expect one of two things to happen; either to receive a letter setting out any fundamental concerns, or to proceed to consultation on further main modifications. The Inspector undertook to write to the Council raising any concerns by the end of January 2021 at the latest. No notification of fundamental concerns was received by the January deadline, and the subsequently received main modifications did not suggest any substantive change to the appeal site's housing status.
34. The Council agreed that the required further consultation should take place and this was limited to consultation on the main modifications. These do not include material changes to allocation CD5 relevant to this appeal.
35. The Inquiry was advised that the Inspector has raised no concerns about the inclusion of the appeal site as a housing allocation, and neither has the Council as part of that process. Despite long-standing objections to the proposal, the appeal site has been maintained by the authority as a development allocation since 2016. The Council is supporting the draft allocation and has not suggested it is contemplating changing its position in the future.

*The context of local housing need*

36. The Council can only demonstrate 1.47 years of an expected five-year housing land supply (5YHLS). This represents a further deterioration from 2.2 years identified at the time of its decision to reject the appeal scheme. At the time of its refusal, the Council also had the fourth lowest performance nationally for housing delivery relative to the terms of the Government's Housing Delivery Test. The national context is of an objective of significantly boosting the supply of homes as set out in the Framework.
37. In 2018, the authority had 2,128 live applications for general needs affordable housing, with a maximum wait time of 59 months (nearly 5 years) for a 2-bed flat, and an average wait time of some 25 months (over 2 years) across all property types. By 2021, the average wait time remained similar, but the number of applications had risen to 2,354.

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<sup>6</sup> Schedule of Further Proposed Modifications to the North Hertfordshire Local Plan 2011-2031, page 16

38. Since the start of the plan period (2011) only 518 affordable homes have been constructed. This amounts to 18% of net completions relative to a target of 33%. More locally, no affordable housing has been delivered in Codicote in the last 14 years.
39. In response to its pressing housing situation, the Council has adopted a Housing Delivery Test Action Plan.<sup>7</sup> Whilst recognising how proposed housing sites currently within the Green Belt generally remain subject to tests of very special circumstances, it proposes that it may now be appropriate to determine some planning applications on these sites in advance of the ELP examination being concluded. This position has been reached having regard to various factors, including the potential for early delivery of key infrastructure and the acute shortfall of housing provision relative to Government targets.
40. The Council has advised the ELP Inspector that it considers the appeal site, in conjunction with other allocations in Codicote, to be the only reasonable alternatives for local housing delivery and that exceptional circumstances exist to warrant their release from the Green Belt. The proposal would also be consistent with the Local Plan's general acknowledgement, expressed through Policy 26, to make housing provision, although the detail of that policy is now substantively out-of-date in relation to the current housing requirement.
41. There is an unquestionably urgent need to identify land in North Hertfordshire to provide for essential market and affordable housing. The Council itself acknowledges a substantial and serious housing land supply shortfall, a position which it further describes as 'acute'.<sup>8</sup> I attach very substantial weight to the considerable housing benefits of the appeal scheme, and which include an ELP-compliant affordable housing contribution of 40% of the dwellings.

*The context of local education need/primary school capacity*

42. The appeal scheme makes provision for delivery of playing pitches for the adjacent primary school through a land transfer agreement which, in turn, would enable both expansion and re-configuration of the wider school site.
43. Additional to a future shortfall in school places that will result from the proposed housing growth in Codicote as envisaged by the Council through its ELP, there is already an existing shortage of places within the village and which makes the education need particularly urgent. In 2019, for example, some 11 resident children had to travel to school outside of the village. This pattern appears likely to persist and will have adverse impacts not only in terms of the need to travel and children's welfare, but also in terms of Codicote's social cohesion as a community and the wider implications for its integrity as a sustainable settlement. To meet future needs, the County Council proposes to enlarge the school to accommodate two forms of entry and, given the immediate urgent circumstances, for expansion to commence if possible from September 2022.
44. It is agreed that there are no further options for temporary expansion of the school without locating a mobile classroom on the existing playing field, further encroaching onto the already constrained site area, or on the location of a new permanent classroom block and so placing more pressure on the existing core facilities.

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<sup>7</sup> Cabinet Report dated 23 June 2020, 'Housing Delivery Test Action Plan 2020'

<sup>8</sup> Council closings

45. The County Council does not consider compulsory purchase of the allocated expansion site to be an appropriate alternative. Aside from the expediency of such a course, it would also raise issues of timeliness and resourcing not incurred by the appeal proposal.
46. The appeal scheme would facilitate and support the future of the village school in a locally sustainable location and in a way necessary to support existing needs and further housing development in Codicote.
47. Provision of school land is a clear and very important benefit that should be afforded significant weight. I consider that 'unlocking' the potential of other housing allocations falls to be weighed as a sub-feature rather than as a further and separate benefit in itself. The expanded school would be available to serve the appeal site and other housing allocations as identified by the ELP, or to address such other education needs as apply.

*Summary of conclusions - prematurity*

48. The Framework sets out how arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both: the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to an emerging plan; and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.<sup>9</sup>
49. A scheme of 167 dwellings would constitute less than 2% of the homes the ELP seeks to deliver by 2031. The appeal site relates to Codicote only, and is just one of 34 Green Belt releases proposed throughout the District as a whole. This would not be so substantial such that the plan-making process would be undermined.
50. That said, I do not accept the appellant's classification of prematurity as a 'binary' matter. I am unconvinced that, in circumstances where the requirements of paragraph 49 of the Framework are not met, a decision-maker should be precluded entirely from giving any weight at all to prematurity as a possible harm. Rather, it should be open to conclude as a matter of planning judgement that some weight could still be attributed to prematurity in any overall planning balance if any such harm can be demonstrated.
51. Public confidence may also have different facets. It may be relevant not just to the perceptions of objectors to the scheme, but could also apply to other stakeholders who may have contrasting expectations towards the proposal and its plan-making context, such as people seeking homes in Codicote or persons awaiting affordable housing within the District. It may also be relevant to the parents and guardians of children within the village, and of the commuting children themselves, looking for reassurance regarding their future schooling. By failing to deliver and further delaying the long-standing expectations of the ELP in those regards, their confidence in the planning system could equally be undermined. No particular evidence has been provided as to the overall implications for public confidence or the extent to which different aspects of it may or may not be relevant.

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<sup>9</sup> Paragraph 49

52. I do not accept that a permission for the appeal scheme should pre-determine proposals for other Codicote housing allocations within the ELP. A permission for the appeal scheme would only 'unlock' the potential of the other draft allocations for Codicote insofar as their implementation may be currently precluded by available school capacity. Other relevant site-specific considerations would remain according to the particular merits of each case.
53. I also note that Counsel instructed by the authority in advance of its decision expressly advised the Council that there was no prohibition on the granting of planning permission for residential development in the Green Belt ahead of adoption of the ELP provided the Framework's test of very special circumstances is met.<sup>10</sup>
54. Notwithstanding the Council's commitment to the ELP, should it not be adopted for whatever reason, the appeal scheme, in common with all other development proposals in the District, would still remain to be determined against the extant statutory Local Plan.
55. There is an immediate imperative for people to be housed in Codicote. There is an immediate imperative for resident children to be educated in Codicote. No alternative solution to the ELP was before the Inquiry to meet these urgent and outstanding needs.
56. In terms of the merits of the proposal and its relationship to the ELP, I have no reasonable basis to conclude that determination of this application would be premature or otherwise inapt or that any harm would arise in that regard.

### ***Other matters***

#### *Other non-Green Belt implications for character and appearance*

57. More generally, the scheme would involve loss of countryside, albeit of mixed character, and its replacement with built form. Notwithstanding the quality of the landscaping and other mitigation proposed, housing would remain visible and harm would be incurred by virtue of that loss of existing character and appearance contrary to the aspirations of the Framework. This requires planning policies and decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital.
58. There would be moderate harm in the early years due to the lack of established landscaping, but this would reduce over time through the mitigation proposed. In overall terms, I assess this harm to be in the range of limited-moderate.
59. The scheme would thereby incur a degree of conflict with Policy 57 of the Local Plan which, amongst other things, expects all proposals for residential development to retain existing landscape features where possible. Even so, this policy sets out a range of relatively detailed guidelines for new residential development and falls to be read in conjunction with other, more strategic development plan policies, including Policy 2 and its provision for very special circumstances.
60. Whilst Policy SP5 of the ELP also seeks to seek to recognise the intrinsic value of the countryside, it is significant that the same emerging plan proposes to

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<sup>10</sup> Advice from Suzanne Ornsby QC dated 29 October 2020



remove the appeal site from its current Green Belt designation and allocates the site for built development.

### *Heritage*

61. The appellant's Built Heritage Statement identified implications for particular heritage assets as a consequence of changes to their settings. These concerned three related Grade II listed buildings: Codicote Farmhouse; barn and shed 20 metres north of Codicote Bottom Farm; and barn 50 metres north-west of Codicote Farmhouse. The setting of Ayot House, a Registered Park and Garden (the RPAG), was also identified as being affected.
62. The three listed buildings form a group at Codicote Bottom Farm and are located some 380 metres to the west of the appeal site towards the lower levels of the Mimram valley. The farmhouse and separately listed structures derive special interest from the age, traditional materials and detailing of their historic fabric as purpose-built agricultural structures, and from their configuration and relationship as surviving elements of an historic farmstead.
63. The setting of each of the listed buildings is particularly shaped by their relative proximity and common heritage and this contributes to their significance as an historic group. This collective interest is best understood and appreciated looking westwards away from the appeal site.
64. The sympathetic character of the surrounding fields and farmland forms part of the assets' wider settings and thereby also contributes positively to their particular historic interest. This includes general views from the assets towards the western/south-western boundaries of the appeal site. Even so, the appeal site offers no specific or individual contribution in its own right as part of that wider landscape, and the immediate surroundings of the group, and which make the most positive contribution to setting as part of their significance, would remain unaltered.
65. New landscaping and areas of open space are proposed around the western/south-western areas of the appeal site, with proposed dwellings set back from the boundary and at a relatively lower housing density. There would be some distant views of built form within the wider settings of the listed buildings, but that exposure would be mitigated to some degree over time as the proposed landscaping matures.<sup>11</sup>
66. The introduction of new development within the wider rural settings of the listed buildings at Codicote Bottom Farm would therefore result in limited and less than substantial harm relative to their significance.
67. The significance of Ayot House is as an eighteenth century landscape park and country residence.
68. The proposed scheme would be partially visible within long distance views outwards from the asset's drive and across the valley towards the western/south-western fields of the appeal site. Those views similarly make a minor positive contribution to the setting and significance of the RPAG as part of the wider rural landscape. The appeal site again makes no specific contribution to the significance of the RPAG in its own right, and the asset's

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<sup>11</sup> This is particularly evidenced by Photomontage Viewpoint 2 contained within the Landscape and Visual Impact Assessment

- wider setting and overall significance would be unaffected. The degree of harm would be limited and less than substantial relative to its significance.
69. Elsewhere, an icehouse exists as a non-designated heritage asset in proximity to the listed Codicote Lodge to the north of Heath Lane. The icehouse is set well back from Heath Lane and is separated by a substantial boundary wall and related planting. The icehouse derives significance from its association to Codicote Lodge and its relatively self-contained grounds rather than from any particular wider physical or functional relationship to the appeal site to the south of Heath Lane. I do not consider the scheme would have any implications for its setting or otherwise affect its significance.
70. Similarly, given their location and physical relationship to the appeal scheme, I do not consider the proposal would have any implications for the settings of other listed assets, including Codicote Lodge itself, Rose Cottage and Bentleys. The same applies to the adjacent Codicote Conservation Area. There would be minor visual changes from the appeal scheme in the outward view from the Conservation Area along Heath Lane. The existing and largely planted character of Heath Lane would remain, and the scheme would not unduly affect the Conservation Area's setting with implications for its significance as an important historic village.
71. I therefore conclude that the proposal would be harmful to the setting of the Registered Park and Gardens at Ayot House, and would thereby be contrary to Policy 19 of the Local Plan. This seeks to refuse development proposals which destroy or result in any loss in the value of Historic Parks and Gardens.
72. More widely in relation to the limited harm arising to both Ayot House and the listed assets at Codicote Bottom Farm, the scheme would conflict with Policy HE1 of the ELP. Amongst other things, this seeks to conserve and preserve the significance of designated heritage assets.

#### *Ecology*

73. The proposal is accompanied by an Ecological Assessment (the Assessment) updated in June 2021. Although the evidence is of a site of overall limited ecological significance, adoption of a suitable Landscape and Ecological Management Plan (the Plan), in line with the Assessment's recommendations, is proposed to ensure the biodiversity value of existing habitats is both retained and enhanced.
74. Indicative proposals identify how harm to biodiversity can be mitigated, and a financial contribution has been agreed with the Council to facilitate other off-site enhancements. The Plan would include details of how a measurable level of biodiversity gain should be achieved. This requirement would be set out in a planning condition relating to the Plan should the appeal be allowed, and the financial contribution is accommodated within the planning agreement.
75. Whilst the accompanying biodiversity metric pre-dates the most recent national technical guidance, it has been prepared over significant time and been reviewed and approved by Hertfordshire Ecology.
76. Policy NEx of the ELP states that planning permission will only be granted for development proposals that appropriately protect, enhance and manage biodiversity in accordance with various criteria. All development should, amongst other things, deliver measurable net gains for biodiversity and/or

restore degraded or isolated habitats where possible. Amongst other requirements, applicants should have regard to a need to integrate appropriate buffers of complimentary habitat into ecological mitigation and design. The appropriateness of any buffers will be considered having regard to the status of the relevant habitat. Policy NEx specifies 12 metres of complimentary habitat to be provided around wildlife sites, trees and hedgerows.

77. The scheme would not provide 12 metres of complimentary planting throughout the site. The site contains relatively few trees and the evidence is of hedgerows in relatively poor condition and having suffered from historic mismanagement and grazing pressure. In a no development scenario, such grazing pressure would be likely to continue and to the further detriment of existing vegetation.
78. The scheme offers an opportunity to restore features and instigate appropriate management such that overall ecological value can be sustained and developed in the long-term. The proposal includes a commitment to protect, restore and/or enhance hedgerows. In that context, I do not find the absence of a uniformly defined buffer to be a significant shortcoming and do not consider Policy NEx would be compromised in overall terms.
79. The scheme makes a reasonable contribution to ecology and biodiversity gain broadly consistent with the Framework. This encourages opportunities to improve biodiversity in and around developments and integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
80. I therefore conclude that the proposal would not be harmful to local ecology or biodiversity and would not thereby conflict with Policy 14 of the Local Plan. Amongst other things, this expects development proposals to take account of, and where possible, to show improvements to the nature conservation value of the site and its surroundings. In addition, the Local Plan may require the preparation and implementation of a management scheme to maintain or enhance the site's nature conservation value.
81. The proposal would preserve diversity and deliver net gains to which I attach limited weight as a benefit.

#### *Highways*

82. No objection is raised by the local highway authority, and a number of particular technical details, including arrangements for site access and sightlines and associated implications for highway safety, would be the subject of planning conditions should the appeal be allowed.
83. Whilst there would be an increase in local traffic generation, I have no unrebutted evidence of particular significant harm in relation to highway matters or of matters which cannot be addressed either by planning conditions as proposed by the parties or by the more general mitigation set out in the planning agreement. Further, the Framework requires that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.

*Other concerns and harms*

84. A number of other lesser scale harms would arise from the scheme, including loss of agricultural land and, notwithstanding the best efforts of mitigation, implications for local living conditions during the construction period and for air quality in conjunction with traffic generation. These are matters to which, in sum, I attach limited weight.
85. I am satisfied that any other relevant adverse impacts arising could be addressed either through the mitigation proposed in the planning agreement, or through appropriate planning conditions should the appeal be allowed.
86. The physical relationship of the scheme to Codicote Lodge, and particularly in terms of respective boundaries and relative locations, would be such that there should be no adverse implications for the living conditions of its residents once the scheme is completed.

*Planning agreement*

87. The agreement makes various commitments to mitigation, additional to arrangements for affordable housing and for the school land transfer. These include transport contributions to a bus link, a car club, to sustainable movement and to a travel plan. Social contributions would be made to education, libraries, health, sport, open space and to youth facilities. Environmental contributions are proposed for ecology, waste regulation and fire safety.
88. The mitigations are consistent with Policy 51 of the Local Plan, with Policy SP7 of the ELP, and with relevant aspects of the Council's planning obligations supplementary planning guidance<sup>12</sup>. These seek to ensure necessary contributions towards the provision and maintenance of facilities or in respect of other implications arising directly as a result of a development.
89. I am satisfied with the form and content of the undertaking as a deed. I find the undertaking to be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and to be generally fit-for-purpose. Accordingly, I take into account the commitments and accompanying terms as considerations of my decision.

*Other considerations of the ELP*

90. Whilst the proposal provides for 167 dwellings which is more than the 140 homes identified in the CD5 allocation, Policy HS1 makes clear that the number of units is intended as indicative and that the capacity of each allocation will be shaped by a design-led approach to development.<sup>13</sup> The project history and evolution of the appeal scheme reflect such an approach.
91. Policy CD5 identifies a range of other development criteria for the appeal site, including assessment of transport, contamination, drainage, biodiversity, public rights of way, landscape, and its physical relationship to the Heath Lane frontage. It also identifies lower density of development to the southern edge of the development to respect local character. I find no overall conflict in these regards.

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<sup>12</sup> Planning Obligations Supplementary Planning Document Final Version November 2006

<sup>13</sup> Paragraph 8.3 accompanying Policy HS1 refers

92. The scheme also accords with other more general ELP requirements. The Council accepts that the proposal would comply with the ELP as a whole if adopted, and I agree.

*Other benefits*

93. Aside from provision of market and affordable housing, and facilitating development of the school and its associated contribution to unlocking the development prospects of other housing allocations, and securing net biodiversity gain, the scheme would yield a number of other benefits.
94. The economic benefits of development would include investment in construction and related employment for its duration. There would also be an increase in subsequent local household expenditure and demand for services. This would be appreciable given the scale of development, its physical proximity to services within the High Street, and the relatively self-contained nature of the village.
95. I disregard any suggestion of financial contributions to the local authority through Council tax receipts, New Homes Bonus payments or similar as a possible benefit of the scheme. The Guidance states that whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms.<sup>14</sup> Further, it advises that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority or other government body.
96. The appeal site is currently private land crossed and enclosed by public footways. The scheme would generally ensure the site becomes more publicly accessible. It would include significant provision of open space generally available to the local community and upgrading of footways.
97. I attach significant collective weight to these other benefits.

*Other planning decisions and judgements*

98. Various references have been made in evidence and submissions, and all of which have been considered. Each turns on its own facts and, whilst generally relevant to varying degrees, none dissuade me from the assessments and conclusions set out above based upon the particular circumstances of this appeal. These have also been considered in relation to aspects of the planning balances which follow.

**Planning balances**

*Heritage*

99. The Framework advises that heritage assets are an irreplaceable resource, and requires them to be conserved in a manner appropriate to their significance. When considering the impact of a proposed development on the significance of a designated heritage asset, it requires great weight to be given to an asset's conservation, and irrespective of the scale of harm. It further requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Where a development proposal would lead to less than substantial harm to the significance of a designated heritage

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<sup>14</sup> Paragraph: 011 Reference ID: 21b-011-20140612

asset, as in this case, such harm should be weighed against the public benefits of the proposal.

100. The extensive public benefits arising from the scheme as described would out-weigh the collective harm arising for the heritage significance of Codicote Farmhouse and its associated barns and shed, and in relation to Ayot House.
101. Accordingly, the Framework does not provide a clear reason for refusing the development proposed in this specific regard.

*Very special circumstances*

102. The Framework makes clear that, when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.<sup>15</sup>
103. In addressing this subject, the Courts have made clear that a particular mathematical exercise is not required. Rather, a single exercise of judgement is necessary to assess whether there are very special circumstances which justify the grant of permission notwithstanding the particular importance of the Green Belt and the seriousness of any harm to it.<sup>16</sup>
104. As inappropriate development the appeal scheme would constitute definitional harm. Built development of the scale and form proposed would incur moderate-significant harm to the openness of the Green Belt, and moderate harm through encroachment. There would also be a range of other, more limited non-Green Belt harms as identified, including limited-moderate harm to the landscape, and to heritage assets.
105. Against that, the circumstances of this application are quite extreme. The context is of a critically inadequate and deteriorating 5YLHS set against pressing housing needs, no recent local provision of affordable housing, and a local school unable to meet the needs of the village and with subsequent implications for local children, for Codicote's social cohesion, and for its future as a sustainable settlement supporting itself and minimising the need to travel. Such circumstances are acute and highly compelling. The proposal would make a very significant contribution in all those regards and would be accompanied by high quality mitigation to help offset and minimise the visual implications of additional built form.
106. I attach very substantial weight to the critically needed housing benefits of the scheme, significant weight to addressing the urgency for school expansion and further weights to the range of other lesser scale benefits as identified. In that context, and irrespective of the further support in favour of the proposal drawing from the advanced status of ELP itself and from the Council's affirmation of it, I find potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, to be

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<sup>15</sup> These current iterations of the Framework and Guidance also post-date the Minister for State for Housing and Planning's Written Statement made on 17 December 2015 as referenced in evidence by the Council

<sup>16</sup> Sefton Metropolitan Borough Council v Secretary of State for Housing, Communities, and Local Government v Jerry Doherty 7 May 2021 Case No: CO/2050/2020 Co/2051/2020

clearly outweighed by these particular other considerations. Very special circumstances therefore exist to justify the proposal.

107. Accordingly, such very special circumstances mean the proposal would not conflict with Policy 2 of the Local Plan. Further, given the existence of very special circumstances, it follows that the application of the Framework's Green Belt policies does not provide a clear reason for refusing planning permission.<sup>17</sup>

### **Overall assessment**

#### ***i) The development plan as a whole***

108. I consider the development plan policies which are most important are those referred to and variously applied in my assessment of the main issues and other considerations.<sup>18</sup>

109. I have identified some limited conflict with Policies 19 and 57, compliance with Policy 2, some commonality with Policy 26, and found no significant discord with other saved provisions. Given the particular significance of Policy 2 to this proposal, and the limited scale of conflict with Policies 19 and 57, I conclude the scheme would accord with the development plan as a whole.<sup>19</sup>

#### ***ii) Other material considerations***

110. As the Council is unable to demonstrate a 5YHLS, the tilted balance of paragraph 11d) is engaged.<sup>20</sup>

111. The collective benefits of the development as described would be extensive. As such, any possible adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The scheme therefore benefits from the presumption in favour of sustainable development and which is a further material consideration.

#### ***iii) Final planning balance***

112. The proposal would accord with the development plan as a whole and other material considerations do not indicate a decision other than on those terms. Accordingly, planning permission should be granted, subject to conditions.

### **Conditions**

113. I have considered as a starting point the suggested list of conditions put forward and agreed by both main parties. I have had regard to the advice set out in the Guidance and in the Framework, and have reviewed and adjusted detailed recommendations in terms of the necessity for, and reasonableness of, individual conditions and other aspects thereof, and to ensure clear and enforceable wording and general consistency.

114. For reasons of certainty, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings.

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<sup>17</sup> See Footnote 7

<sup>18</sup> The main parties agree that the most important policies of the development plan are Policy 2, Policy 51 and Policy 57. The Council considers that Policy 26 is also one of the most important policies

<sup>19</sup> There was also no dispute at the Inquiry that, if very special circumstances do apply, there would be broad compliance with the existing development plan

<sup>20</sup> By virtue of Footnote 8

115. To safeguard the character and appearance of the appeal site and its surroundings, conditions require details to be submitted of external materials, and of landscaping, and inclusive of proposed footpath treatments. Details are also required of tree and hedge retention and protection, of a Landscape and Ecological Management Plan, and of lighting. Full external details are also required of the proposed pumping station facilities and associated works.
116. To ensure a satisfactory living environment for both occupiers and neighbours, conditions require details to be approved of proposed drainage, and investigation and remediation of any possible site contamination. Details are also required of refuse arrangements.
117. To safeguard living conditions for future occupiers, a condition is necessary to ensure appropriate noise insulation of the dwellings.
118. To protect the living environment of neighbours during construction, it is necessary for the works to be undertaken in accordance with a Construction Method and Traffic Management Statement, and including arrangements for working hours and waste management.
119. To ensure the free and safe movement of vehicles and pedestrians at and in the vicinity of the site, various technical details are required to be followed regarding arrangements for ensuring safe access, and for treatment of Footpaths 14 and 15. Similarly, conditions make provision for retention of garage parking, and for cycle storage. The future status of the estate roads and their detailed design relative to use by refuse vehicles and other associated matters also require further attention.
120. To further contribute to a sustainable development, conditions require submission of a revised Energy and Sustainability Statement and of arrangements for electric vehicle charging.
121. To safeguard any hitherto unrevealed heritage interest within the site, a scheme of archaeological investigation is necessary.
122. Matters relating to contamination, drainage, archaeology, tree and hedgerow retention and protection, the Construction Method and Traffic Management Statement, and the design of the access for construction traffic, are all to be addressed before development commences. This is necessary given the importance of those matters and the implications which could otherwise arise should works proceed in the absence of their resolution.

### **Conclusion**

123. For the above reasons, I conclude the appeal should be allowed subject to the conditions identified.

*Peter Rose*  
INSPECTOR



## **SCHEDULE OF CONDITIONS**

### **Time limit**

1. The development hereby permitted shall begin not later than 3 (three) years from the date of this decision.

### **Details and drawings**

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan S201  
Existing Site Survey S202  
Site Layout Masterplan P201 Rev L  
Site Layout (North site, Heath Lane) - Roof Plan P203 Rev C  
Site Layout (South site, St Albans Road) - Roof Plan P202 Rev C  
Coloured Site Masterplan C201 Rev L  
Proposed Street Elevations A-A & B-B P210 Rev B  
Proposed Street Elevations C-C & D-D P211 Rev A  
Proposed Street Elevations E-E & G-G P212 Rev A  
Proposed Street Elevations H-H & K-K P213 Rev B  
Proposed Street Elevations L-L & P-P P214 Rev A  
Coloured Street Elevations A-A & B-B C210 Rev B  
Coloured Street Elevations C-C & D-D C211 Rev A  
Coloured Street Elevations E-E & G-G C212 Rev A  
Coloured Street Elevations H-H & K-K C213 Rev B  
Coloured Street Elevations L-L & P-P C214 Rev A  
Affordable 2 Bed Houses (Sheet 1 of 3) P220  
Affordable 2 Bed Houses (Sheet 2 of 3) P221  
Affordable 2 Bed Houses (Sheet 3 of 3) P222  
Affordable 2 Bed W/C Houses (Sheet 1 of 3) P223  
Affordable 2 Bed W/C Houses (Sheet 2 of 3) P224  
Affordable 2 Bed W/C Houses (Sheet 3 of 3) P225  
Affordable 3 Bed Houses (Sheet 1 of 6) P226  
Affordable 3 Bed Houses (Sheet 2 of 6) P227  
Affordable 3 Bed Houses (Sheet 3 of 6) P228  
Affordable 3 Bed Houses (Sheet 4 of 6) P229  
Affordable 3 Bed Houses (Sheet 5 of 6) P230  
Affordable 3 Bed Houses (Sheet 6 of 6) P231  
Affordable 4 Bed Houses (Sheet 1 of 2) P232  
Affordable 4 Bed Houses (Sheet 2 of 2) P233  
Private 2 Bed Houses - Type 2A P240 Rev A  
Private 3B Houses - Type 3A (Sheet 1 of 5) P241 Rev B  
Private 3B Houses - Type 3A (Sheet 3 of 5) P243 Rev B  
Private 3B Houses - Type 3A (Sheet 4 of 5) P244 Rev B  
Private 3B Houses - Type 3A (Sheet 5 of 5) P245 Rev B  
Private 3B Houses - Type 3B (Sheet 1 of 9) P246 Rev B  
Private 3B Houses - Type 3B (Sheet 2 of 9) P247 Rev A  
Private 3B Houses - Type 3B (Sheet 3 of 9) P248  
Private 3B Houses - Type 3B (Sheet 4 of 9) P249  
Private 3B Houses - Type 3B (Sheet 5 of 9) P250  
Private 3B Houses - Type 3B (Sheet 6 of 9) P251 Rev B

Private 3B Houses - Type 3B (Sheet 7 of 9) P252 Rev B  
Private 3B Houses - Type 3B (Sheet 8 of 9) P253 Rev A  
Private 3B Houses - Type 3B (Sheet 9 of 9) P254  
Private 3B Houses - 3A/3B Sales special P255 Rev B  
Private 3B Houses - Type 3D (Sheet 1 of 2) P258  
Private 3B Houses - Type 3D (Sheet 2 of 2) P259  
Private 4 Bed Houses - Type 4A (Sheet 1 of 5) P260 Rev B  
Private 4 Bed Houses - Type 4A (Sheet 2 of 5) P261 Rev A  
Private 4 Bed Houses - Type 4A (Sheet 3 of 5) P262 Rev A  
Private 4 Bed Houses - Type 4A (Sheet 4 of 5) P263  
Private 4 Bed Houses - Type 4A (Sheet 5 of 5) P264 Rev A  
Private 4 Bed Houses - Type 4B (Sheet 1 of 4) P265  
Private 4 Bed Houses - Type 4B (Sheet 2 of 4) P266  
Private 4 Bed Houses - Type 4B (Sheet 3 of 4) P267  
Private 4 Bed Houses - Type 4B (Sheet 4 of 4) P268  
Private 4 Bed Houses - Type 4C (Sheet 1 of 3) P269  
Private 4 Bed Houses - Type 4C (Sheet 2 of 3) P270  
Private 4 Bed Houses - Type 4C (Sheet 3 of 3) P271  
Private 4 Bed Houses - Type 5A (Sheet 1 of 2) P272  
Private 4 Bed Houses - Type 5A (Sheet 2 of 2) P273  
Private 2 Bed Houses - Type 2A (Sheet 2 of 3) P274  
Private 2 Bed Houses - Type 2A (Sheet 3 of 3) P275  
Private 3 Bed Houses - Type 3A (Sheet 1 of 4) P276  
Private 3 Bed Houses - Type 3A (Sheet 2 of 4) P277  
Private 3 Bed Houses - Type 3A (Sheet 3 of 4) P278  
Private 3 Bed Houses - Type 3A (Sheet 4 of 4) P279  
Apartments Plots 1-5 - Proposed Plans P280  
Apartments Plots 1-5 - Proposed Elevations P281  
Apartments Plots 18-27 - Proposed Ground Floor Plan P282  
Apartments Plots 18-27 - Proposed First Floor/Roof Plan P283  
Apartments Plots 18-27 - Proposed Elevations P284  
Ancillary Buildings (Garages and sub-station) P290 Rev A  
Entrance Vignette 1471-0006 Rev G  
Landscape Masterplan 1471-0007 Rev I  
LEAP Landscape Plan 1471-0008 Rev C  
Tree Planting Strategy 1471-0009 Rev F  
Proposed Access Arrangement St Albans Road -  
2015/2368/001 Rev H  
Proposed Access Arrangement Heath Lane -  
2015/2368/003 Rev F  
PROW Footpath design 2015/2368/014 Rev E  
Swept Path Assessment Southern 2015/2368/016 Rev A  
Swept Path Assessment Southern 2015/2368/017 Rev A  
Swept Path Assessment Northern 2015/2368/018 Rev A  
Swept Path Assessment Northern 2015/2368/019 Rev A

### **Pre-commencement**

3. No development shall commence until a Construction Method and Traffic Management Statement has been submitted to and been approved in writing by the local planning authority. The Statement shall include the following details as a minimum:
- a) a phasing plan for the works;
  - b) works access;
  - c) arrangements for cleaning of the site entrance and the adjacent public highway, and to include wheel washing facilities;
  - d) principal routes for construction traffic;
  - e) site compounds (including areas designated for car parking);
  - f) cable trenches;
  - g) foundation works;
  - h) sub-station/control buildings;
  - i) disposal of site waste materials;
  - j) arrangements to ensure the local community will be kept informed of matters of site progress as appropriate, and including confirmation of key contact details for site management during the course of the works.

During the demolition and construction period no activities shall take place on site outside the hours of 08:00-18:00 Monday to Friday; no activities shall take place outside the hours of 08:00-13:00 on Saturdays; and no work shall take place on Sundays or Bank Holidays.

The approved Statement shall be adhered to at all times throughout the demolition and construction period.

4. No development shall commence until full details and a programme for an investigation and risk assessment of the nature and extent of any contamination on the site have been submitted to and been approved in writing by the local planning authority.

Arising from the investigation and risk assessment, a fully detailed remediation scheme to bring the site to a condition suitable for the proposed development by addressing any unacceptable risks shall be submitted to and be approved in writing by the local planning authority prior to the commencement of any development.

The scheme shall include all works to be undertaken and a programme for implementation of the proposed details.

The scheme shall also set out monitoring and maintenance arrangements to include, where appropriate, observing the long-term effectiveness of all proposed contamination remediation over an agreed period.

The remediation scheme shall be carried out in accordance with its approved details and the agreed programme.

In the event that contamination is found at any time when subsequently carrying out the development that was not identified by the previous investigation and risk assessment, that finding shall be reported in writing

immediately to the local planning authority, and all works shall cease on that part of the site until written confirmation is provided by the Council that they may continue. A further investigation and risk assessment shall be undertaken specific to the identified contamination and, where remediation is necessary, a supplementary remediation scheme in light of those findings shall be submitted to and be approved in writing by the local planning authority. The details shall include a programme for implementation and the remediation shall be undertaken as approved and thereafter be maintained as required.

Following completion of all measures identified in the approved remediation schemes, verification reports demonstrating that full details and specifications of the approved schemes have been implemented shall be prepared in accordance with agreed timescales and be approved in writing by the local planning authority.

5. No development shall commence until full technical details, and including a programme for implementation, of the proposed drainage system have been submitted to and been approved in writing by the local planning authority in accordance with the submitted Flood Risk Assessment and Surface Water Drainage Strategy carried out by RSK (Ref: 132884-R1(2)-FRA dated 25 September 2018).

The drainage arrangements shall include a management and maintenance plan for the lifetime of the development, and the drainage scheme shall be implemented in accordance with the approved details and the agreed programme.

A verification report shall be submitted to and be approved in writing by the local planning authority prior to occupation of the first dwelling demonstrating that full details and specifications of the approved drainage system have been implemented.

6. No development shall commence until a programme of archaeological field evaluation has been implemented in accordance with a written scheme of investigation which has been previously submitted to and been approved in writing by the local planning authority. The results of the evaluation shall inform the preparation of a subsequent mitigation strategy/action plan which shall be submitted to and be approved in writing by the local planning authority prior to the commencement of the development. The mitigation strategy/action plan shall be implemented in accordance with the details and a programme as approved.

Any historic or archaeological features not previously identified which are subsequently revealed when carrying out the development shall be retained in-situ and shall be reported in writing immediately to the local planning authority. Works shall be immediately halted in the area/part of the development affected until provision has been made for retention and/or recording in accordance with details and a programme that have been previously submitted to and been approved in writing by the local planning authority. The details shall be undertaken as approved and in accordance with the agreed programme.

7. No development shall commence until a detailed scheme for the protection of existing trees and hedges to be retained in accordance with the general measures set out in the submitted Arboricultural Impact Method Statement (Ref: ASH21253aia-ams dated 28 August 2018), and an accompanying programme for implementation of the scheme, have been submitted to and been approved in writing by the local planning authority.

The scheme shall be implemented and maintained in accordance with the details as approved and in accordance with the agreed programme. Any tree or hedge removal shall be limited to that specifically to be approved.

No building materials shall be stored or mixed within 10 metres of a tree or hedge. No fires shall be lit where flames could extend to within 5 metres of retained foliage, and no notices shall be attached to any trees.

8. No development shall commence until one of the proposed accesses has been constructed to accommodate operational traffic to a minimum standard of base course construction for the first 20 metres and the join to the existing carriageway has been constructed in accordance with specifications previously submitted to and approved in writing by the local planning authority. The final gradient of the accesses to serve the dwellings shall not be steeper than 1 in 20 for the first 12 metres from the edge of the carriageway.

### **Pre-occupation**

9. Prior to the construction of the final road surfacing of the development (but not prior to those works associated with operational/construction access), details of the circulation route for refuse collection vehicles shall be submitted to and be approved in writing by the local planning authority. The details shall include a full construction specification for the route. No dwelling shall be occupied until the refuse vehicle circulation route has been constructed in accordance with the details as approved, and thereafter the route shall be maintained in accordance with such details.
10. No dwelling shall be occupied until full details of the proposed arrangements for future management and maintenance of the proposed roads within the development have been submitted to and been approved in writing by the local planning authority. The roads shall thereafter be maintained in accordance with the approved management and programme details until such time as an agreement has been entered into under the Highways Act 1980 or a private management and maintenance company has been established.
11. No dwelling located to the south of Footpath 15 shall be occupied until the proposed principal access road from St Albans Road, as defined on drawing number 16208 P201 Rev L, has been provided at least to binder course level. The access road shall be completed to surface course prior to the occupation of the final dwelling to be constructed south of the Footpath.
12. No dwelling shall be occupied until full details of proposed arrangements for management of traffic along the narrow link road crossing Footpath 15

adjacent to Plots 107 and 143 have been submitted to and been approved in writing by the local planning authority. The arrangements shall be implemented as approved and in accordance with an agreed programme, and shall be maintained and retained thereafter.

13. No dwelling with a dedicated and adjacent car parking space shall be occupied until it has been provided with an electric vehicle ready domestic charging point. The charging arrangements shall be maintained and retained thereafter.
14. Prior to occupation of any apartments, two electric vehicle ready domestic charging points shall be provided to serve the car parking spaces of those dwellings. One electric vehicle charging point shall be installed to serve Plots 1-5 and one charging point shall be installed to serve Plots 18-27. The arrangements shall be maintained and retained thereafter.
15. No dwelling shall be occupied until a scheme setting out details of cycle parking has been submitted to and been approved in writing by the local planning authority. Such facilities shall be provided in accordance with the approved details prior to the first occupation of each corresponding dwelling and shall be maintained and retained thereafter.
16. No dwelling shall be occupied until the proposed accesses as shown on drawings 2015/2368/003 Rev F and 2015/2368/001 Rev H have been provided with visibility splays of 2.4 metres by 59 metres in both directions to the St Albans Road access and 2.4 metres by 57 metres in both directions to the Heath Lane access. There shall be no obstruction to visibility within the splays between heights of 0.6 metres and 2.0 metres above the level of the adjacent public carriageway. The arrangements shall be implemented as approved, and shall be maintained and retained thereafter.
17. No dwelling shall be occupied until a scheme setting out details of all on-site household refuse and recycling storage and collection facilities (and including details of any enclosures or screening) to serve each dwelling have been submitted to and been approved in writing by the local planning authority. The scheme shall also include arrangements for management of any other waste generated by the development. All such facilities shall be provided in accordance with the approved details prior to the first occupation of the corresponding dwellings and shall be maintained and retained thereafter.
18. No dwelling shall be occupied until a scheme of external lighting has been submitted to and been approved in writing by the local planning authority. The scheme shall be designed to ensure public safety and to minimise the potential effects upon the ecology of the site and its surroundings. The scheme shall be implemented as approved and in accordance with an agreed programme, and the arrangements shall be maintained and retained thereafter.
19. No dwelling shall be occupied until the noise mitigation measures for that property as identified in the Grant Acoustics report Ref: GA-2017-0007-R1-Rev A dated 26th July 2018 (Noise Assessment for Proposed Residential Development), and including any relevant adjacent

fencing specifications, have been fully implemented, and the measures shall be maintained and retained thereafter.

### **Other**

20. Prior to commencement of any above ground construction works, full details of the external materials to be used in the facings all buildings, and including their roofs, shall be submitted to and be approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.

21. Prior to commencement of any above ground construction works, full details of all hard and soft landscaping, and of all fencing, enclosures, associated structures and equipment, and including detailed treatment and landscaping of Footpaths 14 and 15, shall be submitted to and be approved in writing by the local planning authority. The works shall be implemented in accordance with the details as approved and within the first planting season following the commencement of the development or such other period as may be agreed in writing by the local planning authority, and shall be maintained and retained in accordance with an approved management plan. Any trees or plants which die within 5 (five) years of planting, or which are removed, or which become seriously damaged or diseased, shall be replaced with others of the same size and species and in the same positions within the next planting season.

22. Prior to the commencement of any landscaping works, a Landscape and Ecological Management Plan which details how a minimum of 22.95 ecological units will be delivered as part of the development shall be submitted to and be approved in writing by the local planning authority. The Plan shall include the following details:

- a) aims and objectives of management;
- b) existing and proposed features to be managed, including specific reference to improvements to retained hedgerows, and to proposed hedgerows;
- c) species composition of habitats to be enhanced and created;
- d) a programme for implementation;
- e) the body or organisation responsible for implementation of the Plan;
- f) monitoring and remedial measures of the Plan.

The Plan shall be implemented in accordance with the details and the programme as approved and the measures shall be maintained and retained thereafter.

23. Prior to the commencement of the erection of any above ground pumping station facilities, full external details of all relevant buildings, and of associated enclosures and works, shall be submitted to and be approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.

24. In accordance with drawing 2015/2368/014 Rev E, Footpaths 14 and 15 shall be provided with a width of no less than 4 metres for their entire length within the boundaries of the site. The 4 metre width shall include a 2 metre wide path and a 1 metre wide strip of landscaping either side.

25. Prior to commencement of any above ground construction works, a revised Energy and Sustainability Statement shall be submitted to and be approved in writing by the local planning authority. The development shall be constructed in accordance with the approved Statement and identified measures shall be maintained and retained thereafter.

26. Notwithstanding provisions of the Town and Country Planning (Use Classes) Order 1987 and of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and nor any re-enactments nor amendments thereto), the garages approved as part of this permission shall be retained and be available for the parking of vehicles only and shall not be occupied as habitable floorspace.

End of Conditions 1-26



## **APPEARANCES**

### **For the local planning authority:**

Heather Sargent of Counsel, instructed by Legal Services,  
North Hertfordshire District Council

She called:

Phillip Hughes - Director, PHD Chartered Town Planners Limited

(Sam Dicocco, Senior Strategic Sites Officer also contributed to  
round-table discussions)

### **For the appellant:**

Tom Cosgrove of Queen's Counsel, instructed by Jonathan Stoddart of CBRE

He called:

Adam Kindred - Associate Director, CBRE

Angus Jeffery - Director, Landscape Visual

Quentin Andrews - Director, OSP Architecture

Neil Rowe - Director, RGP

Jacob Hepworth-Bell - Director, Ecology Solutions

Victoria Brocksopp - Senior Associate Director, RPS

Colin Whittingham - Associate Director, RSK

(Christina Daniels of BDB Pitmans LLP also contributed to the  
round-table discussion in relation to the proposed planning  
agreement)

### **Interested parties:**

Chris Watts - Maze Planning Limited on behalf of Codicote Parish Council

Lisa Foster - Save Rural Codicote

Matt Dodds - Planning and Biodiversity Manager,  
Herts and Middlesex Wildlife Trust

**INQUIRY DOCUMENTS**

The following documents were submitted and accepted by the Inquiry:

<b>Reference</b>	<b>Title</b>
ID1	Key View 2 - Codicote Conservation Area
ID2	Mr Kindred summary proof of evidence
ID3	Mr Hughes summary proof of evidence
ID4	Appellant's application for costs dated 29 July 2021
ID5	NPPF table of changes - Mr Kindred proof
ID6	Appellant's opening statement
ID7	Council's opening statement
ID8	ELP map with key and constraints overlaid
ID9	Local Plan map with key and constraints overlaid V2
ID10	Codicote Lodge Codicote Historic England List Entry 1296186
ID11	Heritage Gateway printable result for Codicote Lodge
ID12	Figures 1-14 - extracts from appellant's heritage evidence
ID13	Email from Mr Kindred dated 3 August 2021 relating to ID12
ID14	North Herts Landscape Study 2011 - Part 1
ID15	Minister for State for Housing and Planning's Written Statement made on 17 December 2015
ID16	Public rights of way proposed footpath design - 2015/2368/014 Rev E
ID17	Statement of common ground dated 3 August 2021
ID18	Council's closing statement dated 16 August 2021
ID19	Council's response to appellant's application for costs dated 16 August 2021
ID20	Appellant's final comments dated 16 August 2021 following Council's response to application for costs
ID21	Appellant's closing statement dated 16 August 2021
ID22	Completed section 106 agreement dated 26 August 2021



## Costs Decision

Inquiry held on 3, 4, 5 and 10 August 2021

Site visits made on 13 July and 12 August 2021

**by Peter Rose BA MRTPI DMS MCM1**

an Inspector appointed by the Secretary of State

**Decision date: 28<sup>th</sup> September 2021**

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### **Costs application in relation to Appeal Ref: APP/X1925/W/21/3273701 Land south of Heath Lane, Codicote SG4 8YL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ashill Land Ltd for a partial award of costs against North Hertfordshire District Council.
  - The Inquiry was in connection with an appeal against a decision to refuse planning permission for 167 dwellings (Use Class C3) and associated works including formal open space, internal road network, landscape enhancement and creation of accesses from Heath Lane and St Albans Road; and the demolition of 66 St Albans Road.
- 

### **Decision**

1. The application for a partial award of costs is allowed.

### **The submissions for Ashill Land Ltd**

2. It is submitted that the Council behaved unreasonably with respect to its second reason for refusal by failing to provide evidence to substantiate that objection.
3. The evidence relied upon consists of no more than a general assertion that public confidence would be undermined in the process because people do not like the proposal. The evidence has not grappled with the clear, reasoned advice from Officers nor provided support that the emerging local plan (the ELP) would be undermined.

### **The response by North Hertfordshire District Council**

4. The Planning Practice Guidance (the Guidance) is clear that costs may only be awarded where a party has behaved unreasonably and that conduct has directly caused another party to incur unnecessary or wasted expense in the appeal process.<sup>1</sup>
5. The application should be dismissed for the simple reason that, even if, as the appellant contends, the Council had behaved unreasonably with respect to the substance of its second reason for refusal, the appellant has not incurred unnecessary or wasted expense in the appeal process as a result of any such conduct on the authority's part.

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<sup>1</sup> Paragraph 30: Reference ID: 16-030-20140306

## Reasons

6. The Guidance identifies various possible unreasonable behaviours by a local planning authority. These include failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.<sup>2</sup> The Guidance encourages authorities, amongst other things, to properly exercise their development management responsibilities, and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.<sup>3</sup>
7. Whilst Council Members have the discretion to reject a recommendation made by its professional Officers, evidence to substantiate each reason of a subsequent refusal of planning permission is still required.
8. Reason 2 of the Council's decision alleged that the scheme would be premature relative to the progress of the ELP. No change to the Council's position in relation to that objection was foreshadowed at the Inquiry Case Management Conference held in June 2021, and the parties then proceeded on those terms.
9. Under cross-examination at the Inquiry, the Council's planning witness clarified the authority's underlying concerns to this objection. In particular, he advised that the concerns were about a potential loss of confidence in the planning system should a site-specific decision be taken in advance of the ELP's adoption. The witness explained how that loss related not to the plan as a whole, but just to the implications for Codicote. He further clarified that, whilst such concerns still amounted to a harm weighing against the scheme, he would not invite the Inspector to dismiss the appeal on that basis alone.
10. On the final day of the Inquiry, the Council then withdrew the objection as a reason for refusal but maintained harm would still arise and to be weighed in the planning balance.
11. I find it legitimate, in principle, for a concern not to be assessed to be so significant as to constitute a reason for refusal but still to give rise to a degree of harm to be weighed as part of the decision.
12. Even so, that concern still requires to be substantiated through evidence. Very little evidence has been offered by the authority beyond general supposition, and no satisfactory rebuttal has been provided to the professional assessment presented to its Members in this regard. In my accompanying decision, I explain why I find no basis to objections around prematurity and nor around implications for public confidence.
13. The Council suggests that no additional expense was incurred by the appellant as, in any case, the authority still maintained that some harm would arise in that respect, and prematurity was also raised by third parties to the appeal. I am not persuaded by these points.
14. Firstly, the Framework states that where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the

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<sup>2</sup> Paragraph 049: Reference ID: 16-049-20140306

<sup>3</sup> Paragraph 028: Reference ID: 16-028-20140306

outcome of the plan-making process.<sup>4</sup> No such credible evidence has been provided, and the authority has not satisfactorily explained rejection of the conclusion set out in its Officer report that a refusal on such terms would not be justified.

15. Secondly, prematurity was maintained by the Council as one of only two reasons for the authority's formal opposition to the scheme. As a formally stated reason for refusal by the local planning authority and maintained until the final day of the Inquiry, such status is entitled to elicit greater attention and effort in rebuttal than one of many general bases for objection variously cited by local interested parties.
16. Whether presented as prematurity or public confidence, the appellant has therefore been required to incur unnecessary cost in responding to an unreasonable ground for refusal.

### **Conclusion**

17. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has been demonstrated. Accordingly, I conclude that a partial award of costs is justified.

### **Costs Order**

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Hertfordshire District Council shall pay to Ashill Land Ltd the costs of the appeal proceedings described in the heading of this decision but limited to those costs incurred in responding to Reason 2 of the authority's decision only, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
19. Ashill Land Ltd is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Peter Rose*  
INSPECTOR

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<sup>4</sup> Paragraph 50