

Town and Country Planning Act 1990

Town and Country Planning (Hearing Procedure) Rules (England) 2000

Appeal by Angle Property (RLP Shepperton) LLP Against the Decision of Spelthorne Borough Council, as Local Planning Authority, to Refuse to Grant Outline Planning Permission in Respect of:

Outline application with approval sought for scale, access and siting, with details of appearance and landscaping reserved, for the demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes

at:

**Land known as Bugle Nurseries, Upper Halliford Road,
Shepperton, TW17 8SN**

**PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI
ON BEHALF OF SPELTHORNE BOROUGH COUNCIL**

OCTOBER 2023

PLANNING INSPECTORATE REF: APP/Z3635/W/23/3325635

LOCAL PLANNING AUTHORITY REF. 22/01615/OUT

CONTENTS

1	Introduction	2
2	Site and Surroundings	5
3	The Appeal Proposal	13
	Planning History	16
4	Planning Policy	19
5	The Council's Case	29
	Preliminary – Housing Land Supply	29
	Preliminary – Reserved Matters	29
	Preliminary – Spatial Strategy	32
	Preliminary – Previously Developed Land	33
	Green Belt – Inappropriate Development	38
	Green Belt – Openness	41
	Green Belt – Purposes	48
	Green Belt Harm – Conclusions	51
	Other Harm – The Housing Mix	53
	Other Harm – Amenity	55
6	The Appellant's Other Considerations Case	58
7	The Planning Balance and Summary	63

APPENDICES

A	Aerial Imagery	66
---	----------------	----

Phillip Eric Hughes will say:

I am the principal of PHD Chartered Town Planners, a town planning consultancy that I established in 1995. I had also worked at a senior level in local government for 10 years in both Planning Policy and Development Control.

I have a Bachelor of Arts Honours Degree (BA [Hons]) in Town and Country Planning and have been a corporate member of the Royal Town Planning Institute (MRTPI) since 1990 and I am a Fellow of the Royal Geographical Society (FRGS). I also have a Diploma in Management Science (Dip Man) and I am a Member of the Institute of Management (MCMI). I am also a member of the Town and Country Planning Association and an affiliate member of the RIBA.

I have represented a wide variety of clients at appeals ranging from Local Planning Authorities (including LB Camden, RB Kingston, Spelthorne, Hertsmere, Watford and Walsall Boroughs and Central Bedfordshire, Uttlesford, Epping Forest and Bassetlaw Districts), to Parish Councils (including Bovingdon, Hartlip and Tetsworth) to housebuilders (including New Homes Estates Limited, MASMA Limited, Whittleworth Homes, Henry Homes plc.), to developers (Lanz Group, Mitre Property Management Limited, Mark Stephen Limited etc.), to property companies (Orb Estates, Property Matters LLP, Property Matters LLC, Albermarle Property Investments plc.), to businesses (Super Toughened Glass Limited, Williams Tenders Limited, JIRWL, Hollywell Spring Limited), and amenity groups (Anglefield Residents Association, Stopit Action Group, Paynes Lane Association, Hemley Hill Action Group, Birch Green Residents Group, Bury Gate Residents Association) and individual householders.

I have visited the appeal site and general locality on a number of occasions and I am familiar with the policies applicable to the site. I am familiar with the local, national and regional planning policies relevant to this appeal. I have appeared for and given evidence on behalf of the Council at a number of Inquiries and Hearings including the Hearing at this site in 2021. I first visited the appeal site in 2015.

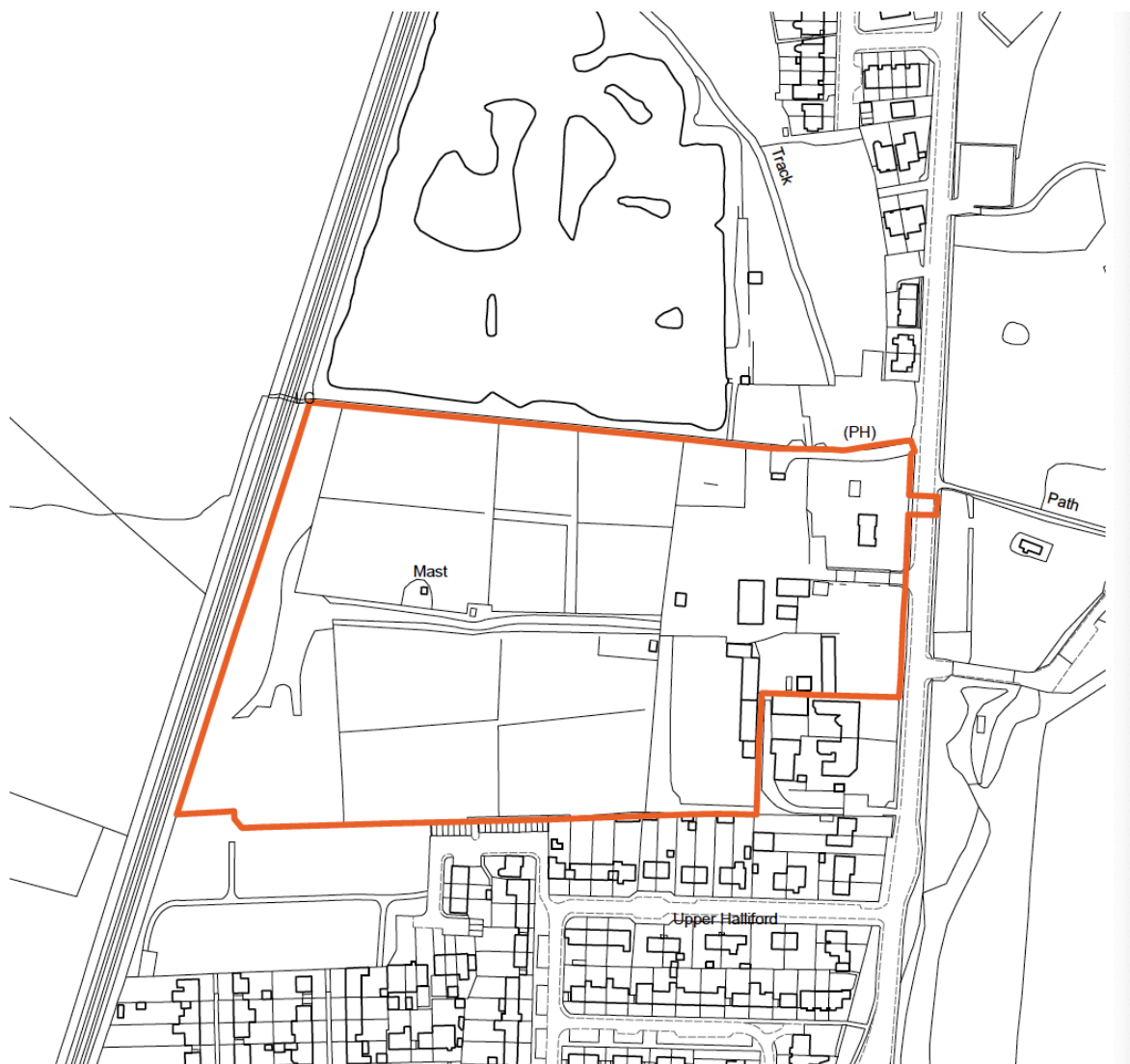
The evidence that I have prepared and provide for this appeal has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

1 Introduction

1.1 The application the subject of this appeal proposed the:

“Outline application with approval sought for scale, access and siting, with details of layout, appearance and landscaping reserved, for the demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes.”

1.2 The extent of the application site is defined on the plan extract below:



© Crown copyright and database rights 2019 Ordnance Survey 10002428

The Appeal Site

1.3 The appeal site comprises a former nursery site, that use ceased at site and the site has since been used for commercial purposes including outdoor storage. There is a residential bungalow located at site on the north eastern part of the site fronting Upper Halliford Road.

1.4 The appeal was submitted against the failure of the Council to determine the application. Subsequently, the application the subject of this appeal was considered by the Council, and they determined that had they been in a position to do so they would have refused to grant planning permission. The putative reasons for refusing planning permission are set out in the committee report at CD1.41 and state:

1. *The development comprises inappropriate development in the Green Belt for which no other considerations sufficient to amount to very special circumstances have been demonstrated. It will result in the site having a more urban character, will diminish the openness of the Green Belt and conflict with the purposes of including land within it. In particular, it would fail to check the unrestricted sprawl of large built-up areas, fail to prevent neighbouring towns merging together and would not safeguard the countryside from encroachment. It is therefore contrary to Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 and Section 13 (Protecting Green Belt Land) of the Government's National Planning Policy Framework 2021.*
2. *The number of smaller units (1 bed and 2 bed units) is 35 out of the total 80 units and equates to 43% of the total units, or not including the affordable units only 11 out of 40 which equates to 27.5%. Therefore, the proposal fails to comply with Policy HO4 which requires a majority of smaller units, of the Core Strategy and Policies Development Plan Document 2009.*
3. *By reason of the location, scale and height of the proposed dwellings and their proximity to the boundaries, along the lack of detail shown on the siting and scale parameter plans, and details on the application form, it has not been demonstrated that the impact on neighbouring properties will be acceptable and as such it is not possible to enable scale and layout to be determined at this stage.*

1.5 The application was supported by plans and illustrative material intended to show how such a quantum of development as proposed could be accommodated on the appeal site.

1.6 The description of development outlined on the application form submitted with the application the subject of this appeal confirms that application to be in outline. In response to the question pertaining to which matters are for approval at this stage the Appellant confirmed at the CMC that they seek approval of:

- ◇ Access
- ◇ Layout and
- ◇ Scale

1.7 The Council's Committee Report is attached at CD1.41.

1.8 In assessing harm and benefits I have adopted a scale where substantial is the top of the scale and none is the bottom as set out below:

Substantial
Significant
Moderate
Limited
None

- 1.9 At the Case Management Conference (CMC) the Inspector raised issues relating to the correspondence from Network Rail, the Flood status of the land and the relationship of the land to Heathrow Airport. I deal with each of these issues briefly below.

Network Rail

- 1.10 At CD2.8 is correspondence from Network Rail in respect of the application the subject of this appeal.
- 1.11 The matters raised by Network Rail are not issues that are objections taken by the Council and do not change the Council's putative reasons for refusal.
- 1.12 The Development Impact Assessment of February 2023 makes reference to seeking a Planning Obligation to seek contributions toward the railway crossing and other improvements. The Council does not consider such matters are necessary and thus fail the tests for a Planning Obligation (NPPF and CIL 122(2)).
- 1.13 Thus the Council is not seeking a planning obligation in respect of such matters.

Flooding

- 1.14 The appeal site lies within Flood Zone 1. The surface water plan produced by the Appellant in their FRA confirms that small parts of the developable site area fall within areas of medium and high risk from surface water flooding.
- 1.15 The areas of medium and high risk of surface water flooding are so small that notwithstanding the outcome of a sequential test the Council does not rely on this as a reason for refusal and does not invite the Inspector to dismiss the appeal on such grounds.

Heathrow

- 1.16 The appeal site does not fall within any of the Heathrow Airport noise contour zones.
- 1.17 However, it does fall within a safeguarding zone where Heathrow Airport are required to be consulted for any development that exceeds 90 metres in height.

2 Site and Surroundings

- 2.1 The appeal site comprises a former nursery site, part of the site has been used for commercial purposes and is occupied by a limited number of single storey buildings some now vacant and used for a variety of commercial purposes including vehicle repairs.



The Appeal Site 2020 © Google Earth (yellow dotted lines = public footpaths)

- 2.2 The land fronting Upper Halliford Road is largely open with a bungalow and its garden land occupying the half to the north of the existing access road and open land occupied by the frame remnants of some former poly tunnels occupying the land to the south of the access. The land to the west of the open frontage is occupied by a number of modest single storey buildings and is also used for parking vehicles and open storage.
- 2.3 The extent of hardsurfacing and existing buildings is clearly shown on the Existing land Uses¹ application drawing and the floor area and elevations of those buildings are shown on the Existing Site Buildings Elevations Drawing².
- 2.4 Some of the buildings are dilapidated (such as B.13) but are included in the schedule.

¹ A12146-F2101-P1

² A12146-F2500-P1

- 2.5 The existing buildings at site have a footprint (and GEA as they are all single storey) of 1086m².
- 2.6 The volume of the existing buildings is set out on the table on the Existing Site Buildings Elevations Drawing². It conforms the volume to be 3533m³.
- 2.7 Land to the west of the commercial use is open undeveloped land which runs up to a bund and the railway line beyond which comprises the western boundary of the site. That land was formerly used for grazing.
- 2.8 A part of the south-western corner of the site was previously used for waste transfer activities; however such a use has not operated from the site for some years and the land has become largely overgrown and little remains evident of that previous use save some abandoned skips and a pile of household furniture which appears to have been dumped at the site. I address the previously developed status of parts of the site in section 5.



The former Waste Transfer Station

- 2.9 Approximately a third of the southern boundary is occupied by open allotments, the balance is to the rear garden boundaries of dwellinghouses in Halliford Close and a single storey garage court in Bramble Close.

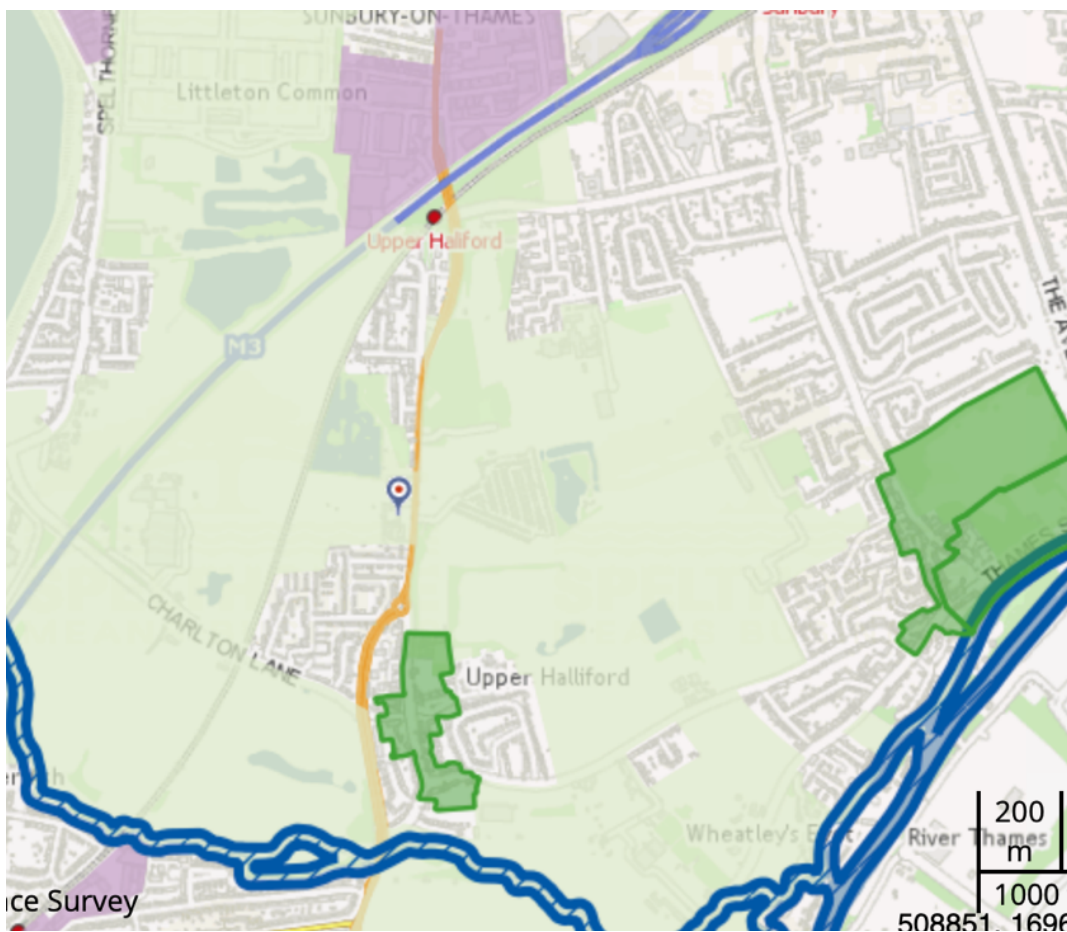
- 2.10 The houses along the eastern part of the southern boundary fronting Halliford Close comprise two storey detached and semi-detached dwellings which wrap around the junction with Upper Halliford Road. The southeast corner of the appeal site (which would otherwise comprise a rectangle) is excluded from the appeal site and is occupied by two bungalows³.
- 2.11 Land to the rear (west) of the site beyond the railway line comprise Green Belt countryside occupied in part by a waste transfer station and the M3 Motorway beyond. To the east of the appeal site is open Green Belt land comprising Halliford House Recreational Ground and a rugby club training ground. Within the open space is the Grange Farm Estate an estate of single storey chalet style dwellings.
- 2.12 The northern boundary of the site is delineated by Public Footpath 19. Fronting Upper Halliford Road is a block of 8 apartments developed on the site of the former Bugle Public House. To the rear of the apartments and comprising the majority of the northern boundary is open land largely occupied by a body of water used for fishing and nature conservation purposes.



The Appeal Site June 2019 © Google Earth

- 2.13 The appeal site is accessed by a driveway from Upper Halliford Road that runs between the bungalow and former polytunnels.

³ 137 and 139 Upper Halliford Road



Site Centred on Extracts of the Proposals Map (Green Tint = Green Belt)

- 2.14 The site has an area of 4.8 hectares and is located within the Green Belt.
- 2.15 The site is part of a wider belt of open land that is identified on the Proposals Map of the Core Strategy.
- 2.16 The site frontage to Upper Halliford Road is open to the south of the existing access road and to the north of the access road the land is occupied by a bungalow and its open garden land.



**View along Upper Halliford Road of the Appeal Site Frontage Looking North
Viewed from Opposite the Access to Grange Park © Google**



**View along Upper Halliford Road of the Appeal Site Frontage Looking South
Viewed from the Junction with Footpath 19 © Google**

- 2.17 The boundaries of the appeal site include a 'gappy' hedgerow and a number of trees. An Oak tree in the north east corner of the appeal site is the subject of a Tree Preservation Order.



View along Upper Halliford Road looking south of the existing access - Winter 2021



Frame to former poly tunnel (south of the entrance) in 2021

- 2.18 As noted, a number of the buildings and structures at the site comprise dilapidated structures. The remaining former polytunnels to the south of the access road is in an advanced state of dilapidation. The photograph above illustrates the condition of existing structures at site in 2021 and the land has subsequently become overgrown.



Frame to former poly tunnel (south of the entrance) in August 2023

- 2.19 Waste transfer activity at site ceased some time ago and the Inspector in determining an appeal for a widened access in January 2017⁴ described the use as occupying a relatively small section of a field and described the waste transfer station: “[...] *this use appears to be relatively low key* [...]”. In 2021 when the previous appeal was determined my visits to the site conformed that the waste transfer activity had ceased and it appeared at that time that the use had ceased some years previously. The photograph above at 2.8 also demonstrates that it has not been in use for some years.
- 2.20 The site is predominately open with a central section that appears to be used for a combination of storage purposes predominantly comprising the parking a number of vehicles. The levels of parking and storage at site varies over time (as would be expected on any storage site).

⁴

APP/Z3635/W/16/3155163

- 2.21 As illustrated on the aerial photography the site comprises part of a larger swathe of open Green Belt land that extends to the north, west and east and it provides connectivity between the parcels west of the appeal site beyond the railway lines and that east of Upper Halliford Road including Halliford Park and the former golf course last used as a rugby club training ground and footpath network from which the site is visible.



View of the Appeal Site from Halliford Park

3 The Appeal Proposal and Planning History

- 3.1 The application details are included at section 1 and in the committee report at CD 1.41
- 3.2 The application is in outline with only landscaping and appearance as reserved matters⁵.
- 3.3 The proposal involves the redevelopment of the site from hardstanding and a limited number of single storey low key commercial buildings to a residential development comprising up to 80 dwellings (in the form of flats and houses with a maximum height of 9.5 metres⁶).
- 3.4 The application is accompanied by a number of plans those marked indicative are not for approval at this stage whereas all other plan, including parameters plans, are for approval at this stage.



Extract from the Indicative Proposed Site Plan⁷

- 3.5 Therefore insofar as the application relates to layout the above plan is indicative and thus not for approval at this stage whereas the Proposed Parameter Siting Plan below is a plan that is for approval at this stage.

⁵ The Post CMC Note confirms the Inspector's provisional view that the appeal is proceeding on the basis that both scale and layout are before him for determination at this stage.

⁶ As defined on the Parameters Plan A12146-D2002-P1

⁷ A12146 D2600 P1



Extract from the Proposed Parameter Siting Plan⁸

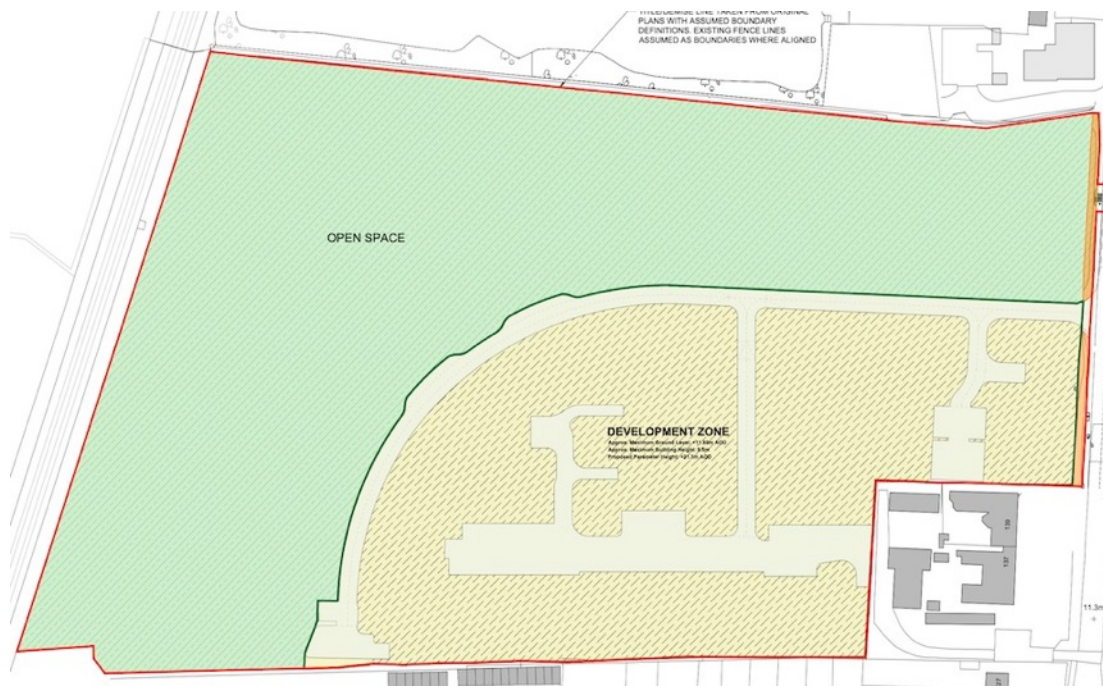
- 3.6 This plan is the only application plan that shows the layout of the proposed buildings and hardstanding at site. It therefore comprises the extent of information available to enable the Inspector to determine details of layout which is defined as⁹:

“the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.”

- 3.7 For the avoidance of doubt the Inspector is being asked to determine the layout of the proposed scheme at this point in time and thus the size, dimensions and location of all the buildings shown on the above plan, together with the location of all access roads and hardstanding will be fixed by the approval of the outline planning permission.
- 3.8 Scale is also included for consideration at this stage and the extent of information before the Inquiry to enable determination on this matter is restricted to the Proposed Development Zone Height Parameter Plan an extract of which is produced below:

⁸ A12146 D2005 P1

⁹ §2 Town and Country Planning (Development Management Procedure) (England) Order 2015



Extract from the Proposed Parameter Zone Height Plan¹⁰

3.9 Scale is defined as:

“the height, width and length of each building proposed within the development in relation to its surroundings

3.10 Therefore in order to determine scale of the proposed buildings the essential information any decision maker requires is the height, width and length of each building proposed and then in order to assess its relationship to its surroundings the layout of the proposed buildings will be necessary information.

3.11 The indicative layout plan shows 24 maisonettes of which 18 are one bed and 6 two bed units as well as eleven 2 bedroom houses, thirty four 3 bedroom houses and eleven 4 bedroom houses. The planning application form confirms this mixture of housing types and sizes. The form states that all 80 proposed dwellings are market houses. However, the CIL Application Form states that the proposals include affordable housing¹¹.

3.12 The application form states that the proposals do not involve the loss, gain or change of use of any non-residential floorspace. That is wrong. They also state that there are no existing employees on site. Again, that is wrong.

3.13 The GIA of the existing buildings at site is stated on the existing floorplans to amount to 1086m² as shown on the Existing Site Buildings Plan¹² (i.e. equivalent to the GEA of these single storey buildings).

¹⁰ A12146 D2002 P1

¹¹ Q5(b) of the CIL Application Form dated 177/11/2022

¹² A12146 F2500 P1

- 3.14 The volume of the existing buildings at site is stated to be 3533m³.
- 3.15 The proposed buildings are represented in the CIL Application Form¹³ as having a GEA Floor area of 6948m². The indicative layout plan shows a footprint of dwellings at 3880m² (which is consistent with the Indicative Typical House Layouts Plan¹⁴) and equates to a GEA for these two storey dwellings of 7760m². The Council note that the proposals include a range of other single storey buildings comprising 20 single garages at 23m² each¹⁵, five double garages at 44m² each¹⁶. As such, the Council will maintain that the GEA of the proposed dwellings and garages (i.e. excluding bin stores, cycles stores, sheds etc.) is approximately a minimum of 8442m² should the dwellings and apartments be restricted to two storeys of accommodation only.
- 3.16 In addition, the indicative house type plans show bin stores to serve the 56 dwellinghouses at 1.2m² each¹⁷ and fifty six cycle stores at 1.5m² each¹⁸. To be added to this will be bin and cycle stores to serve the 24 proposed flats.
- 3.17 On that basis the total footprint of proposed buildings would be 4562m² and the GEA of the proposed buildings would be 8593m².
- 3.18 The height parameters plan indicates a maximum height of 9.5 metres for the buildings at the appeal site. The indicative 2, 3 and 4 bedroom dwelling types show only two storeys of accommodation, these dwelling accommodated within buildings that have a maximum height of 9.5 metres above ground level.
- 3.19 Assuming eaves height of 5.5 metres and ridge heights on average at 8.5 metres of the dwellings and garages and car ports to have an average height of 3 metres I estimate that the volume of the proposed dwellings and garages/ car ports would be approximately 29,200m³. In addition the bin and cycle stores would increase the total volume of builds to approximately 29,500m³.

Relevant Planning History

- 3.20 The relevant planning history is detailed at Section 2 of the committee report which is included at CD1.41 and set out in detail Appendix 1 to the Statement of Common Ground.
- 3.21 The most recent planning history comprises an appeal determined in 2021 in which Appeal A was dismissed and Appeal B was allowed.

¹³ CD1.3

¹⁴ A12146 D2500 P1

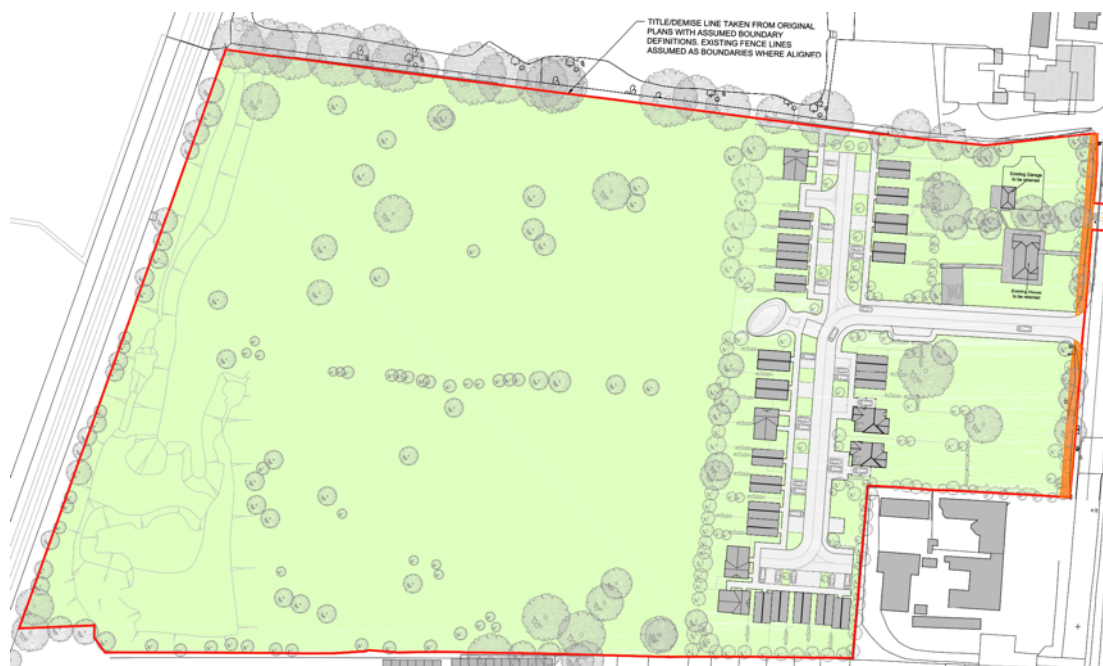
¹⁵ i.e. a total GEA of 460m² for single garages

¹⁶ i.e. a total GEA of 220m² for double garages

¹⁷ i.e. a total GEA of 67m² for bin stores

¹⁸ i.e. a total GEA of 84m² for cycle stores

- 3.22 The permitted scheme (Appeal B) proposed 31 dwellings and retained the frontage of the site to Upper Halliford Road open with the land south of the access road proposed undeveloped and open and the land north of the access road retained as it is occupied by a single storey bungalow and its single storey garage within its garden land.
- 3.23 In his decision the Inspector confirms that save the footprint of the existing access road, bungalow and garage the land fronting Upper Halliford Road does not comprise previously developed land.



Layout Permitted at Appeal in July 2021

- 3.24 I note the permitted scheme proposed 31 dwellings and was submitted in outline with details of access only for determination. Indicative siting/ layout details were provided for information as were indicative house types and a parameters height plan that restricted the height of future dwellings to 8.7 metres. Those plans provided to support the application and appeal determined in 2021 are similar in terms of the information provided to those accompanying the current appeal.
- 3.25 I understand it to be common ground¹⁹ that the extant planning permission granted at appeal in 2021 which included the retention of the existing bungalow and garage (as Appeal B) had a footprint of 1610m², floorarea of 3,126m² and a volume of 10,171m³.
- 3.26 The appeal was allowed in July 2021²⁰. At the same hearing an application for 43 dwellings and a care home was dismissed at appeal²¹.

¹⁹ SoCG at 4.11

²⁰ Appeal B - 20/00123/OUT, PINS Ref. APP/Z3635/W/21/3268661 dated 15 July 2021 at [CD10.1](#)

²¹ Appeal A - 19/01022/OUT, PINS Ref. APP/Z3635/W/20/3252420 dated 15 July 2021 at [CD10.1](#)



Layout Dismissed at Appeal in July 2021

- 3.27 Appeal A was dismissed at appeal it proposed 43 dwellings and a 62 bed care home and as illustrated above it proposed development that came forward of the area of PDL at the appeal site and the houses proposed in Appeal B. I note the care home building is sited at least 40 metres back from the site frontage with a no build zone separating it from the Upper Halliford Road and the apartment block south of the access road sited at least 32.5 metres back from the site frontage with a no build zone separating it from the Upper Halliford Road²².
- 3.28 The Maximum Developable Plot Heights Plan²³ identified four height zones within the appeal site with zones 1 – 3 specifying a maximum height of 10 metres and zone 4 which backed onto Halliford Close specifying a maximum height of 8.98 metres.
- 3.29 The dismissed scheme had a footprint of 3,436m² and a floorarea of 7,162m². I had estimated the volume of that scheme to be 26,000m³.
- 3.30 The appeal site was included in the now paused draft Local Plan as a potential allocation site. I consider the emerging Local Plan and weight to its policies in section 4.

²² See Drawing A11718_D1001_P1

²³ A11718_D1002_P1

4 Planning Policy

- 4.1 The development plan for the area comprises the Spelthorne Core Strategy and Policies Development Plan Document, which was adopted in February 2009, the Spelthorne Allocations DPD (2009) and the Saved Policies of the Spelthorne Local Plan (2001). The Putative Reasons refer to Policy GB1 of the Local Plan which states:

“The Green Belt shown on the Proposals Map will be permanent and within it development will not be permitted which would conflict with the purposes of the Green Belt and maintaining its openness. Subject to the above, development will not be permitted except for uses appropriate to the Green Belt, comprising: -

- (a) agriculture and forestry*
- (b) essential facilities for outdoor sport and recreation, for cemeteries, and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it*
- (c) limited extension, alteration or replacement of existing dwellings*
- (d) appropriate re-use of buildings*
- (e) appropriate engineering and other operations.”*

- 4.2 I accept that the policy does not refer to the very special circumstances test that comprises a core element of the Framework at section 13 and its predecessor PPG2 (Green Belts). However, I consider that the Policy is broadly consistent with the Framework and as such carries the significant weight envisaged by the Framework. I also note that the putative reason also refers to section 13 of the NPPF 2019, which provides the up to date policy context for Green Belt planning, and decision making and states:

“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, is clearly outweighed by other considerations.”

- 4.3 In an appeal decision of 14 February 2018²⁴, the Inspector found the development plan policies including Green Belt policies including GB1 (see DL-18 etc.) to be broadly consistent with the Framework, noting inter alia (DL-61):

“The appellant variously refers to the development plan as being out-of-date. The Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with its content (the closer the policies in the plan are to the policies in the Framework, the greater the weight that may be given) [...] I find the policies referred to above to be broadly consistent with the Framework and, accordingly, not to be out-of-date [...]”

²⁴ Ref. APP/Z3635/W/17/3176212

- 4.4 In two more recent appeal decisions of 15 May 2020²⁵ the Inspector again considered the consistency of Policy GB1 with the Framework and concluded:

“[...] Whilst Policy GB1 was prepared prior to publication of the Framework, and the policy itself does not expressly refer to the possibility of very special circumstances to outweigh harm to the Green Belt, this possibility is covered in its supporting text. The policy is otherwise broadly consistent with the Framework in respect of clauses most applicable to the appeal proposals. It should not therefore be regarded as out of date but afforded significant weight. The decision notices for both appeal applications also refer to Section 13 of the Framework (Protecting Green Belt land).”

- 4.5 However, in his decision of July 2021 the Inspector notes in respect of Policy GB1 at DL10:

“This Policy however pre-dates both the current Framework and the original 2012 version. Furthermore, whilst it shares some level of consistency with national Green Belt policy, it makes no reference to the balancing exercise established in the Framework. As a result, due to a general lack of consistency and in line with Paragraph 213 of the Framework, I consider that this policy is out of date. It is my duty to determine the scheme in accordance with the development plan unless material considerations indicate otherwise. However, where there is inconsistency between the SBLP and the exceptions identified in Paragraph 145 of the Framework, the Framework attracts more weight.”

- 4.6 In line with both the Framework and Policy GB1 the erection of new dwellings would normally be considered inappropriate development.

- 4.7 The exceptions to this are set out in paragraph 1 and I note at 149(g) an exception comprises:

“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

[...]

(g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or*
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”*

- 4.8 The NPPF advises that the Government attaches great importance to Green Belts and that the:

²⁵ APP/Z3635/W/19/3233509 and APP/ Z3635/W/19/3241856

“fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”

- 4.9 Paragraph 138 sets out the five purposes of Green Belts and the Framework advises that inappropriate development should not be approved except in very special circumstances. Paragraphs 147 and 148 state:

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

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 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.”

- 4.10 The Framework seeks to achieve well designed places and as set out at paragraph 130(f) seeks to provide high standards of amenity for existing and future users.
- 4.11 The Framework sets out the Government’s economic, environmental and social planning policies for England. These policies articulate the Government’s vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. Section 9 promotes Sustainable Transport and Section 13 relates to Protection the Green Belt. Section 2 includes the presumption in favour of Sustainable Development, Section 5 relates to the delivery of a sufficient supply of homes, Section 12 relates to achieving well-designed places, Section 14 relates to meeting the demands of Climate change and flood mitigation and Section 15 relates to conserving and enhancing the Natural Environment.
- 4.12 Paragraph 8 sets out the three overarching objectives of sustainable development i.e.:
- a) *“an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
 - b) *a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: and by fostering a well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and*
 - c) *an environmental objective –to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”*

- 4.13 Paragraph 11 sets out the approach to the presumption in favour of sustainable development and decision making in the context or the orthodox approach to decision making or applying the “tilted balance”. In the context of the application of the tilted balance paragraph 11(d) advises:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

- 4.14 With regard to 11d(i) we are referred to footnote 7, and it notes that inter alia:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...].”

- 4.15 As such, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the so called tilted balance in paragraph 11(d)(ii) of the Framework is disengaged.
- 4.16 No changes to this approach are proposed in the 2023 consultation version of the NPPF. Holgate J in **Monkhill**²⁶ interpreted the meaning of the “clear reason for refusal” policy in the presumption in favour of sustainable development for decision-taking in 11(d)(i) of the NPPF. That judgement has been upheld by Lindblom LJ when the case was heard in the Court of Appeal²⁷.
- 4.17 In terms of Green Belt policy the proposals for 80 dwellings and access roads and other development to facilitate the proposed housing comprises inappropriate development, unless it falls within an exception in paragraph 149 of the NPPF. The Appellant’s Statement of Case at 4.4 relies on 149(g). I show in section 5 that the development does not fall within the exception to this in paragraph 149(g) of the Framework.
- 4.18 The development plan was adopted prior to the first publication of the Framework in 2012 (and subsequent revisions culminating in the current 2023 version) and sought to provide housing in line with the requirements of the Regional Spatial Strategy for the South-East (“the RSS”).

²⁶ **Monkhill Ltd v Secretary of State for Housing, Communities And Local Government** [2019] EWHC 1993 (Admin)

²⁷ **Monkhill Ltd v Secretary of State for Housing, Communities And Local Government** [2021] EWCA Civ. 74

- 4.19 The RSS has been withdrawn by Government and the Framework requires local authorities to provide a five-year supply of deliverable housing land to accord with their needs.
- 4.20 The Standard Method requires the provision of 611 dwellings per annum. Adding a 20% buffer to account for under delivery and having regard to the supply of housing land. The Council's position is that for the purposes of this appeal they are able to demonstrate 3.63 year's supply of housing land²⁸.
- 4.21 The Housing Delivery Test result was 69% in February 2022²⁹ again this could engage the presumption in accordance with NPPF paragraph 11(d)(ii) unless policies of the Framework that protect assets such as Green Belt provide a clear reason for refusing the development proposed.
- 4.22 The adopted Core Strategy sought to provide 166 dwellings per annum over that plan period (2006 – 2026), however that was based on the now withdrawn RSS allocation.
- 4.23 The Council is unable to demonstrate a five-year supply of deliverable housing land. Therefore, the most important policies of the plan are out of date in accordance with footnote 8 to the NPPF and therefore in line with paragraph 11(d)(ii) the *tilted balance* comprises the appropriate approach to decision making had policies of the Framework in respect of the Green Belt not provided clear reasons for the refusal of permission.
- 4.24 In light of the Council's position on housing land supply it is my view that the delivery of housing including policy compliant affordable housing is a matter that at this moment in time and in the circumstances of this case should carry substantial weight in the planning balance (irrespective of whether the decision is to be taken in the context of the so called tilted balance or the orthodox decision making matrix). I turn to this in more detail later in my proof.
- 4.25 The development plan currently does not include policies to deliver the up-to-date housing needs within Spelthorne and Policy SP2 is out of date for such purposes.
- 4.26 Putative Reason for Refusal 2 identifies Policy HO4 of the Core Strategy and Development Management Policies DPD (CSDM) which states:

"The Council will ensure that the size and type of housing reflects the needs of the community by:

- a) requiring developments, including conversions, that propose four or more dwellings to include at least 80% of their total as one or two bedroom units,*
- b) encouraging the provision of housing designed to meet the needs of older people, including the provision of 400 units of extra care housing on suitable sites over the period 2006 to 2026,*

²⁸ As per the Former Debenhams Appeal earlier in 2023

²⁹ Government has yet to issue any update for 2023

- c) *encouraging the inclusion within housing schemes of a proportion of dwellings that are capable of meeting the needs, as occupiers, of people with disabilities."*

4.27 Policy HO3 CSDM refers to the provision of Affordable Housing and states:

"The Council's target for affordable housing is that 40% of all net additional dwellings completed over the plan period, 2006-2026, should be affordable. This will be achieved by:

- a) *having regard to the circumstances of each site, negotiating for a proportion of up to 50% of housing on sites to be affordable where the development comprises 15 or more dwellings (gross) or the site is 0.5 hectares or larger irrespective of the number of dwellings. The Council will seek to maximise the contribution to affordable housing provision from each site having regard to the individual circumstances and viability, including the availability of any housing grant or other subsidy, of development on the site. Negotiation should be conducted on an 'open book' basis,*
- b) *encouraging registered social landlords to bring forward smaller sites of one to fourteen dwellings (gross) consisting wholly of affordable housing regardless of site size.*

Provision within any one scheme may include social rented and intermediate units, subject to the proportion of intermediate units not exceeding 35% of the total affordable housing component.

Where affordable housing is provided on any site the Council will seek to ensure that it is maintained in perpetuity, normally by means of a legal agreement, for the benefit of those groups requiring access to such housing. Where such a restriction is lifted, for any reason, the Council will require any subsidy to be recycled for alternative affordable housing provision. Where the Council considers a site is suitable for affordable housing and a reasonable provision could be made, planning permission will be refused if an applicant is unwilling to make such provision.

In proposals for housing development a financial contribution in lieu of provision for affordable housing will only be acceptable where on-site provision is not achievable and where equivalent provision cannot readily be provided by the developer on an alternative site.

Where, as a means of avoiding the requirement to provide affordable housing, a proposed development site is subdivided so as to be below the site size threshold, or is not developed to its full potential so as to be below the number of dwellings threshold, planning permission will be refused."

4.28 It is also considered that the following policies of the Core Strategy, which are not identified in the Decision Notice as policies which are conflicted by the development, are broadly relevant to the consideration of the planning merits of the appeal:

- SP1 (Location of Development) refers to the amount of employment land being maintained, and larger employment areas being retained and increased, it notes that residential redevelopment of poorly located (lawful) employment sites in residential areas may be supported;
 - SP6 (Maintaining and Improving the Environment) by ensuring new developments are attractive, respect their environment, protect areas of environmental quality and improve poor quality environments within urban and Green Belt areas;
 - EN8 (Protecting and Improving the Landscape and Biodiversity) by ensuring new development contributes to an improvement of landscape and biodiversity and refusing permission where harm occurs to landscape.
- 4.29 The Council has also adopted Supplementary Planning Documents including Design of Residential Extensions and New Residential Development SPD (2011) and the Housing Size and Type SPD (2012).
- 4.30 Other relevant policies of the CSDM include:
- LO1 (Flooding)
 - SP2 (Housing Provision)
 - HO1 (Providing for New Housing Development)
 - HO5 (Housing Density)
 - CO3 (Provision of Open Space for New Development)
 - EN1 (Design of New Development)
 - EN3 (Air Quality)
 - EN7 (Tree Protection)
 - EN15 (Development on Land Affected by Contamination)
 - SP7 (Climate Change and Transport)
 - CC1 (Renewable Energy, Energy Conservation and Sustainable Construction)
 - CC2 (Sustainable Travel)
 - CC3 (Parking Provision)
- 4.31 The Spelthorne Local Plan Preferred Options was published (Regulation 18) was published on Tuesday 5 November 2019 with the consultation period expiring on Tuesday 21 January 2020. The Call for Sites pursuant to the emerging Local Plan was launched on 20 January 2021 and it finished on 3 March 2021. The Regulation 19 Local plan ran from 15 June to 21 September 2022 alongside consultation for the Staines Development Framework.
- 4.32 The plan was submitted for examination and an Inspector was appointed. The examination commenced on Tuesday 23 May 2023 and the Local Development Scheme anticipated adoption in September 2023.

- 4.33 However, following an Extraordinary General Meeting of the newly constituted Spelthorne Borough Council following local elections a motion was agreed to pause the remainder of the Local Plan examination hearings on 6 June 2023, the Chief Executive wrote to the Planning Inspector to put forward this request on behalf of the Council and on 8 June 2023 the Examining Inspector, Mr Bridgewater, agreed the request.
- 4.34 It was agreed to appoint Catriona Riddell & Associates to provide ‘critical friend’ support to inform the options for taking the plan process forward. This report informed the Council’s resolution to pause the examination of the emerging Local Plan which was agreed by Inspector Bridgewater.
- 4.35 The Council requested a further extension of time to allow Government to publish the proposed changes to the NPPF signalled for Autumn 2023 ahead of recommencing any hearing sessions. In his letter of 22 September (CD6.2) Inspector Bridgewater agreed to this request.
- 4.36 In the interim I understand that the Council is seeking to address comments from the Environment Agency on the Strategic Flood Risk Assessment and potential flood risk in Spelthorne and other issues raised by the Inspector.
- 4.37 The following emerging policies are considered relevant to the appeal proposal:
- ST1: Presumption in Favour of Sustainable Development
 - ST2: Planning for the Borough
 - PS1: Responding to the Climate Emergency
 - PS2: Designing Places and Spaces
 - SP4: Green Belt
 - H1: Homes for All
 - H2: Affordable Housing
 - E1: Green and Blue Infrastructure
 - E2: Biodiversity
 - E3: Managing Flood Risk
 - E5: Open Space and Recreation
 - ID1: Infrastructure and Delivery
 - ID2: Sustainable Transport for New Developments
- 4.38 The Council’s Emerging Plan identifies the site for allocation for Residential (C3): approximately 79 units (HS1/009 – Bugle Nurseries) in the Pre-Submission Local Plan was submitted to the Planning Inspectorate on 25 November 2022. The site was not identified as a potential allocation site at the Preferred Options Regulation 19 stage due to its Green Belt performance, however in consultation with Members, the Council agreed to amend its spatial strategy for the Regulation 19 Draft Local Plan stage, following a change in the spatial strategy with an altered approach to Green Belt and following the appeal being allowed on the PDL.

- 4.39 The site and area is classified as ‘strongly performing’ in the Council’s Borough-wide Green Belt Assessment 2017 Stage 1 and therefore the site was considered unsuitable for development. As such the site was classified within the Council’s updated Strategic Land Available Assessment (SLAA) as ‘not developable’. The Stage 1 Assessment Report is included at CD6.4.
- 4.40 The Green Belt Assessment (Stage 1) Report: Methodology and Assessment was produced by ARUP (CD6.4) and Table 5.1 confirms the overall parcel of land comprising 12 hectares within which the appeal site sits (Area 39) performs strongly against the purposes of the Green Belt with the strongest contribution toward preventing development that would result in merging of settlements or erosion of gaps including ribbon development along transport corridors and preventing outward sprawl of a large built up area.
- 4.41 Officers Noted:
- “GBA stage 3: Strongly performing - The parcel forms (almost all of) the essential gap between Ashford/Sunbury-on-Thames/ Stanwell and Upper Halliford, preventing development that would significantly visually and physically reduce the actual distance between settlements, and would result in the merging of settlements.”*
- 4.42 Weakly performing areas were identified at section 6, these did not include Area 39.
- 4.43 The site was also considered unsuitable for development in the Green Belt Assessment Stage 2 published in December 2018 at CD6.5. The Assessment stated that the Sub-Area 396 (which covers the site) plays a fundamental role with respect to the wider Green Belt Local Area, and its release would harm the performance and integrity of the wider strategic Green Belt.
- 4.44 The Council completed its ‘Preferred Options Consultation’ (Regulation 18) in January 2020. It proposed a number of sites be allocated for housing and employment development (including some sites currently located within the Green Belt), the appeal site was not proposed at that stage as a site allocation. The site is referred to in the Council’s ‘Rejected Site Allocations – Officer Site Assessment document 2019’ at CD6.7. It stated that the site being part of a wider area of strongly performing Green Belt is considered to outweigh the opportunity to meet housing needs on the basis that development would weaken the wider strategic Green Belt.
- 4.45 The site was not identified as a potential allocation site at the Preferred Options Regulation 19 stage due to its strong Green Belt performance. However, in finalising the draft Local Plan for submission the Council proposed allocating the appeal site for 79 dwellings. The officers assessment underpinning this decision, which was not subject to public consultation prior to submission, has regard to the previously developed status of the land (which I analyse in section 5) and the removal of a bad neighbour. I consider these matters in assessing the Appellant’s Case later in this proof. Officers noted³⁰:

³⁰ Spelthorne Local Plan - Regulation 19 – Officer Site Assessments - Draft Local Plan Allocations –

“The site is identified as part of an area of strongly performing Green Belt through Stages 1 and 2 of the Green Belt Assessment. The site is predominately previously developed land, and its current use is considered to be incompatible with the wider local area. The site already has planning consent however allocation would lead to more control over the development proposals and its delivery. The retention of a strategic Green Belt gap and a public open space are considered to be strong benefits not offered by the consented scheme therefore it is appropriate to consider further.”

- 4.46 My assessment this that reliance on PDL is overstated given the site frontage that is proposed to be developed and the western part of the development site (which comprises the majority of the site area) do not comprise PDL. Therefor the site is not predominately previously developed land and I am unclear how allocating the site would lead to more control over the development proposals and delivery than with the baseline permission which is extant and comprises a fallback position.
- 4.47 Given its stage of preparation the emerging plan carries only limited weight and is not relied on by the Council in this appeal. This weighting is consistent with the agreed position at a recent appeal at the former Debenhams site in Staines and is a matter that is now agreed between the parties³¹.
- 4.48 The Council will update the position regarding the eLP and the relevant emerging policies.

³¹ June 2022 at page 90 – CD6.3
SoCG at 6.15

5 The Council's Case

- 5.1 I first address a number of preliminary issues (i.e. housing land supply, reserved matters, spatial strategy and previously developed land) ahead of assessing the substantive issues relating to Green Belt harm and any other harm.

Preliminary Issue – Housing Land Supply and the Presumption

- 5.2 It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land, and the last published Housing Delivery Test (HDT) result for Spelthorne³² was 69% and thus in accordance with footnote 8 the most important policies of the plan are out of date and the so called tilted balance pursuant to 11(d)ii is engaged.
- 5.3 However, as I demonstrate policies of the NPPF relating to the Green Belt provide clear reasons for refusing the development proposed, accordingly the presumption in NPPF paragraph 11(d)(ii) is disengaged.

Preliminary Issue - The Matters not Reserved for Future Consideration

- 5.4 The Inspector has indicated³³ that the application will proceed on the basis that layout, access and scale are not reserved matters. There is no dispute in respect of access.
- 5.5 Insofar as it is now the Appellant's Case, consistent with the application form (but not subsequent correspondence), that layout is a matter to be determined at this stage then should the details contained on the Proposed Parameter Siting Plan³⁴ comprise the details of layout then such matters will enable layout to be considered as part of this application. The approval of such details in the outline permission will fix the position, location and footprint size of all buildings and the alignment and quantum of all hardsurfacing at the appeal site. I make it plain at this stage that for layout to be considered that plan will fix those details and cannot be treated as illustrative, a parameter for layout or indicative.
- 5.6 What is difficult to understand at this stage is how the indicative site plans³⁵, which are entirely consistent with the Proposed Parameter Siting Plan are to be treated as indicative when they contain exactly the same layout details as the now proposed application plan that relates to a matter to be approved at this stage.
- 5.7 On that basis I have agreed in the Statement of Common Ground that adequate information is contained within the application to enable layout to be considered as part of this application.

³² The 2021 Result published in January 2022

³³ See the Post CMC Note

³⁴ Plan A12146-D2005-P1 – Proposed Parameters Siting Plan

³⁵ Plans A12146-D2100-P1 and D2600-P1

- 5.8 On that basis I am not in a position to request that the Inspector determine that inadequate information is before him to determine the layout details pursuant to the application.
- 5.9 Arguments about the difference between siting parameters and layout are rendered moot by the Inspector's provisional view expressed at the CMC and my position above.
- 5.10 In terms of scale; scale is a product of the width, length and height of the proposed individual buildings³⁶. The layout therefore has to be fixed so we can understand scale. The indicative typical house types include floorplans that show two storeys of accommodation in each dwellinghouses but as these details are purely indicative we cannot rely on them to assist with determination of scale. There is no indication of how many storeys are contained within the blocks of flats. Therefore, in the first instance it is simply not possible to determine scale without the layout details contained on the siting plan (i.e. that is the only place we can find details of the width and length of each individual building).
- 5.11 Secondly, details contained on indicative plans cannot inform determination of a matter that is not reserved for future consideration as these matters have to be fixed by the permission and thus referenced on any approved plan.
- 5.12 The only details before the Inquiry that assists with the height of the proposed buildings throughout the appeal site is reference to the Proposed Development Zone Height Parameter Plan. Thus each buildings has to be considered in the context that it will have a maximum height of 9.5 metres, i.e. it will extend to 21.3m AOD.
- 5.13 I pause at this stage to record my usual experience of such plans is that they provide exactly what they intend, parameters for future applications. Such a plan would, normally inform future reserved matters applications relating to scale and appearance and the outline permission could include a conditions that stated by way of example:
- "Any future reserved matters applications relating to scale and appearance of the proposed buildings shall not exceed the maximum building height on the approved Height Parameters Plan."*
- 5.14 I note in allowing the previous appeal in 2021 Inspector Hunter did not treat the height parameters plan as providing details of scale but he did approve the plan³⁷ and thus it had the same effect as the conditions above.
- 5.15 In 30 + years of working in development management I cannot recall an outline application with such a paucity of information where such important details are being asked to be determined.

³⁶ Town and Country Planning (Development Management Procedure) Order 2015 (as amended).

³⁷ See Condition 3 at [CD10.1](#)

- 5.16 Matters of scale are difficult to divorce from appearance and it is for that reason that they are normally both submitted together. Where they are not then three dimensional representations of the building blocks are presented or empty elevations are presented together with detailed descriptions of the proposed buildings including descriptions of the type of building, overall height, roof form, eaves height and ridge height of relevant so a full appreciation of the scale of the proposed buildings can be achieved for both decision makers and importantly third parties.
- 5.17 Indeed, I cannot recall an application where a simple annotation on a parameters plan relating to a maximum height of buildings has been used to assess scale. In such circumstances, as I detail above, my experience has been that such parameters plans have been used to inform conditions that state that the maximum height of any building pursuant to any reserved matter application should be “x” metres and not to fix a matter that would otherwise be reserved.
- 5.18 In terms of scale for any meaningful consideration to be given to such matters full details of the height of existing surrounding development and proposed footprint, ridge and eaves heights should be provided with any application. Scale cannot be considered (and thus not reserved) with simple reference to a maximum height of buildings.
- 5.19 Whilst professionals may consider they have adequate information to enable them to determine such matters (a situation I am not comfortable with) I cannot conceive of third parties being in a position to determine their position on scale with reference to such a paucity of information.
- 5.20 By way of example whilst we can determine the width and length of the proposed buildings by reference to the siting parameters plan which is now, I understand, to be considered to comprise the fixed Layout details – the only detail of height is the reference to a maximum height of the proposed buildings of 9.5 metres. In my experience 9.5 metres is a tall domestic building that can easily accommodate three storeys of accommodation.
- 5.21 In that respect I note the Appellant has provided some indicative cross sections to accompany the application³⁸. These show that most of the proposed dwellings along the site frontage to Upper Halliford Road all have a ridge height of 9.5 metres (Section B-B). Such ridge heights are repeated along section A-A where all the dwellings have a ridge height of 9.5 metres and eaves height of 6 metres. I also note that where the cross section passes through one of these dwellings it clearly shows three storeys of accommodation in the dwelling.

38

Drawing A12146 D2300 P1

- 5.22 I am mindful that the height of the proposed buildings which is to feed into any assessment of scale is 0.8 metres taller than the permitted height of buildings the subject of the 2021 appeal decision as shown on the proposed parameters plan at 8.7 metres³⁹. However, the cross sections included with that application show elevations of illustrative house types on the development zone of the appeal site, these show pitched roof traditional designed houses with eaves heights of 5 metres (1 metres less than shown on the equivalent drawing for this appeal) and ridge heights of around 8 metres (1.5 metres less than shown on the equivalent drawing for the application the subject of is appeal)⁴⁰.
- 5.23 I also note that the proposed maximum height of a building that feeds into any assessment of scale is 5.6 metres taller than the average height of existing buildings at site of 3.9 metres⁴¹. These are matters I will assess with regard to Green Belt and amenity matters below.

Preliminary Issue – Spatial Strategy

- 5.24 As confirmed by the Council at the CMC in response to a question from the Inspector (Post CMC Note paragraph 25) the Council does not allege conflict with the spatial strategy other than in respect of the incursion of development into the Green Belt as inappropriate development not justified by very special circumstances.

³⁹ Drawing A11718 D1002 P1

⁴⁰ Drawing A11718 D0300 P1

⁴¹ The dismissed appeal proposed buildings ranging from a maximum of 8.98 – 10 metres tall – see drawing A11718 D1002 P1

Preliminary Issue - Previously Developed Land

5.25 I first address this matter as it has implications for our understanding of the Appellant's approach to development at the site. My findings then feed into my conclusions on inappropriate development in the Green Belt context.

5.26 The glossary to the NPPF (2023) defines previously developed land as:

"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape."

5.27 Given layout is now a fixed matter and not reserved for future consideration I have imposed on an extract of the Proposed Parameters Siting Plan⁴² (the layout plan) the extent of previously developed land with reference to the Existing Land Uses Plan⁴³ and the Existing Site Plan⁴⁴.



The Proposed Layout with the Extent of PDL Cross Hatched

⁴² Plan A12146-D2005-P1 – Proposed Parameters Siting Plan

⁴³ Plan A12146-F2101-P1

⁴⁴ Plan A12146-F2100-P1

- 5.28 It is uncontroversial that the cross hatched area, which includes the access road, hardstanding used for storing and parking vehicles and the footprint of the storage buildings and workshops as well as the residential bungalow and outbuilding/ garage comprises previous developed land (PDL).
- 5.29 The land either side of the existing access road fronting Upper Halliford Road (save the footprint of the existing bungalow and garage/ outbuilding) does not comprise previously developed land. This was confirmed by Inspector Hunter in July 2021 in his decision at CD10.1⁴⁵. It was also determined by Inspector Hunter in July 2021 that the western parcels of the site do not comprise previously developed land⁴⁶, he noted that this was common ground amongst the parties.
- 5.30 I include below an extract from the aerial image of the appeal site to show the area south of the access road illustrating that it is not previously developed and indeed the remnant frame of the polytunnel at the site is not readily perceived in such a view.



Land to the south of the Access – April 2017 © Google

- 5.31 This image is consistent with my recollection of the condition of this part of the site dating back to 2015 when I first visited the site. Indeed, I note from viewing aerial imagery dating back to 2008 the image above is consistent with the condition of the land over the whole 15 year period to date. Any fixtures on the land have now blended with the landscape as shown on the aerial images and photographs I have produced.

⁴⁵ See DL16 - DL18

⁴⁶ See DL15

- 5.32 Inspector Hunter's conclusions accord with my view and are consistent with the above sketch plan. I do not consider this land to comprise part of the curtilage of any buildings on the central part of the appeal site. It has remained unused and of distinctly different character to the storage and workshop uses during the past 8 years. I noted at a recent site visit that a lorry trailer had been parked overlapping with this area. I do not consider this recent change to alter the status of the land
- 5.33 With regard to the area at the west of the appeal site formerly used as a waste transfer station (WTS), I first reject the assertion that the use as a waste transfer station is operational (as suggested by the Appellant). When I visited the appeal site in 2015 any activity associated with the WTS was very low level.
- 5.34 In 2021 when I visited associated with the previous appeals there was no waste transfer activity at the appeal site and I am instructed that none has operated at site since. Upon visiting the site associated with preparing this proof in August and September 2023 there was no activity associated with the waste transfer use of the site.
- 5.35 The condition of the land corroborates my findings that any fixtures on the land have now blended with the landscape with the land having regenerated as shown on the aerial image of March 2022 below.



Aerial Image March 2022 © Google

- 5.36 When I visited site in August and September 2023 the site was obviously not in use with a small pile of debris and some abandoned skips the only features present on site.



The Land Identified as a WTS as August 2023 (PH) – Image Taken From the Central Access Track Looking South

- 5.37 I do not consider the WTS to be operational and I consider that even if it was accepted that the land once comprised previously developed land as per the glossary of the NPPF then the remains of any permanent structure or fixed surface structure have blended into the landscape. Therefore the area identified by the Appellant as PDL associated with the WTS is not in my view previously developed.
- 5.38 Therefore, having regard to my sketch overlay above 38 of the proposed 56 dwellinghouses and 18 of the proposed flats⁴⁷ are located on land that is not previously developed.
- 5.39 Therefore, 56 of the proposed 80 dwellinghouses (i.e. 70%) are located on land that is not previously developed.
- 5.40 On the proposed layout plan the land to the east on the site frontage south of the access road is currently undeveloped and contains only the remnant frame of a former growing tunnel. It does not comprise previously developed land (PDL) and it is proposed to site on this land three detached dwellinghouses and a block of six apartments as well as a double width driveway, double carport/ garage and private gardens with domestic paraphernalia and dividing fences etc..

⁴⁷ I have assumed that the two longer blocks accommodate six apartments each and the three shorter blocks accommodate four apartments each.

- 5.41 On land to the west beyond the extent of the hardstanding and buildings hatched on the plan above at 5.26 the land is open and devoid of development save two extremely modest structures that are in an advanced state of decay being subsumed by landscape when I last visited the site in September 2023. The buildings are associated with the grazing use of the land (as confirmed on the Existing Land Uses Plan⁴⁸ and appear to have been former field shelters or storage buildings associated with the open grazing use of this land.
- 5.42 On this part of the site it is proposed to site fifteen detached dwellinghouses, sixteen terraced dwellinghouses and four semi-detached dwellinghouses as well as three apartment blocks totalling twelve apartments, thirteen single garages and two double garages, access roads, large areas of open car parking surfacing, driveways and private gardens with domestic paraphernalia and dividing fences, footpaths and a substation building and turning area etc..
- 5.43 The area of PDL identified on the plan above at 5.26 will accommodate eighteen dwellinghouses and six apartments with seven single garages and two double garages. I estimate the area of previously developed land occupied by the 18 dwellinghouses, 6 apartments, garages, access road, parking areas, gardens and related development to be approximately 5,600m².
- 5.44 The area of land that is not PDL identified on the plan above at 5.26 to be developed for housing to accommodates 38 houses, 18 apartments with thirteen single garages and two double garages. I estimate the area of non – PDL land occupied by the 38 dwellinghouses, 18 apartments, garages, access road, parking areas, gardens and related development to be approximately 13,000m².
- 5.45 On that basis the proposed development accommodates the following split of land by area: 30% of the proposed development is accommodated on PDL and 70% of the proposed development on non-PDL. In respect of numbers of dwellings the PDL land accommodates 24 dwellings (i.e. 30% of the number of dwellings) and the non PDL land accommodates 56 dwellings (i.e. 70% of the number of dwellings).
- 5.46 Therefore, whether by area of house numbers the percentage of the development accommodated on non-PDL equates to 70% of the developable site area.
- 5.47 Therefore it is evident that the majority of the proposed development is accommodated on land that is not previously developed and thus does not meet the first element of the NPPF 149(g) exception (i.e. that it is PDL).
- 5.48 Therefore, I reject any assertion that the proposals overall benefit from an exception to paragraph 149 NPPF.

48

A12146-F2101-P1

Green Belt – Inappropriate Development

- 5.49 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Map of the adopted Plan. Consistent with the Framework 2023 Policy 1 of the adopted Plan does not include a development incorporating 80 residential dwellings, access roads etc. as a form of development comprising an exception to the definition of inappropriate development.
- 5.50 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception⁴⁹.
- 5.51 The construction of buildings (80 dwellings garaging, a substation, bin stores, cycle stores and sheds) laying of hardsurfacing (access roads, driveways, footpaths and car parking spaces), and erecting fences and other structures at the appeal site comprises inappropriate development.
- 5.52 Paragraph 148 of the NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that should be attributed substantial weight.
- 5.53 Paragraph 147 NPPF states that inappropriate development should not be approved except in very special circumstances. Then paragraph 148 confirms that “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. The test is to be “clearly outweighed” and not merely “outweighed”.
- 5.54 The application of NPPF paragraph 148 provides a clear reason to refuse planning permission under NPPF 11(d)(i), and it would only ever be through the exercise of the Green Belt planning balance in NPPF para. 148 wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness and any other harm that permission could be granted.
- 5.55 Therefore, the correct approach to decision making necessitates identifying both Green Belt and any other harm and providing weight for each harm and then identifying the “other considerations” relied on in support of the application by the Appellant and weighing them. Then only if those other considerations “clearly outweigh” the harm by way of inappropriateness and all other harm do very special circumstances exist.
- 5.56 The development comprises inappropriate development and substantial weight applies to such harm as recognised by the NPPF. The proposal conflicts with the NPPF and Policy 1 of the Local Plan and inappropriate development is of itself harmful to the Green Belt.

⁴⁹

See **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin)

- 5.57 As such, the burden to justify the grant of planning permission passes to the Appellant in this case as in order to grant planning permission other considerations of sufficient force to clearly outweigh all the harm to the Green Belt and any other harm must be demonstrated before very special circumstances exist.
- 5.58 The Framework requires harm by way of inappropriateness is harm that must be attributed substantial weight. Any Green Belt harm carries substantial weight.
- 5.59 In addition, the harm by way of inappropriateness and any other harm is required to be clearly outweighed in order that very special circumstances exist to overcome the requirements of Chapter 13 of the Framework and policies of the development plan.



The Proposed Layout with the Extent of PDL Cross Hatched

- 5.60 I have previously shown that the majority of the proposed development (70% of the proposed dwellings and 70% of the developable area) are located on land that is not previously developed. The extract plan above illustrates this position. I understand the Appellant to consider the proposed development not to be inappropriate on the basis they consider it to benefit from any of the exceptions pursuant to paragraph 149(g) NPPF 2023. NPPF 149(g) states that exceptions to the normal approach of considering buildings to be inappropriate in the Green Belt include:

“limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- - not have a greater impact on the openness of the Green Belt than the existing development; or*
- - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”*

- 5.61 For the purpose of this appeal the first important qualification to benefit from the exceptions under NPPF 149(g) is that the land is previously developed. I have already demonstrated that the land proposed to be developed is not all previously developed. I also do not consider the area to the east adjacent to Upper Halliford Road to fall within the curtilage of any building such that it would comprise PDL. Moreover, I note the previous agricultural poly tunnels on the land have now been removed and the frame remnants of one remain and even if the land was once considered PDL it no longer is because *“the remains of any permanent structure or fixed surface structure have blended into the landscape.”*
- 5.62 As to the western land to the rear of the hardsurfacing and workshop buildings it does not comprise part of the curtilage to any of the storage uses or workshops and has been used for grazing horses. It is free of any development save two extremely modest field shelters/ stores and is not PDL.
- 5.63 As to the land comprising the former waste transfer station I have detailed my experience of the use of the land and I have produced at **Appendix 1** some aerial images of the site. I consider that *“the remains of any permanent structure or fixed surface structure have blended into the landscape.”* and as such that part of the appeal site (which is not proposed to be developed for housing) does not comprise PDL.
- 5.64 Given that the whole of the appeal site does not comprise previously developed land and the proposed development is not confined to previously developed land it is difficult to see how the proposal could be said to meet the exceptions set out in 149(g).
- 5.65 However, as I have demonstrated in response to the issue of openness the proposed development would not only expand into land that is currently open and thus have a greater impact on openness⁵⁰ and would therefore not be exempt under the first bullet point to NPPF 149(g).
- 5.66 The proposals includes a quantum of development that vastly exceeds the existing footprint (by 334%), existing floorarea (by 690%) and existing volume of buildings (by 735%). It also extends west deeper into the site than existing development and eastwards closer to the road frontage. The development is also substantially taller than the existing development. Therefore, in addition to not being on PDL the proposed development would not comply with the second bullet point of NPPF 149(g) as the proposals would *cause substantial harm to the openness of the Green Belt*.
- 5.67 Whilst I am not convinced that any contribution to identified affordable housing is what is contemplated by the second bullet point of 149 NPPF given the proposals include land that is not PDL as well as resulting in substantial harm to the openness of the Green Belt then they would not comprise an exception to buildings being inappropriate in the Green Belt under paragraph 149(g) of the NPPF.
- 5.68 Therefore, I consider that the proposal comprises inappropriate development.

⁵⁰ Such a conclusion is common ground – see SoCG at paragraph 6.4

Green Belt - Openness

- 5.69 The Framework (137) identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby avoid urban sprawl. Green Belt policy is a spatial policy.
- 5.70 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact⁵¹. However, the word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents⁵².
- 5.71 In **Turner**, Sales, LJ stated as follows (so far as relevant):
- "14. [...] The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents
15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]
16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.
25. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."

⁵¹ **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ

⁵² **Turner v SSCLG** [2016] EWCA Civ 466, Arden, Floyd and Sales LJ

5.72 The Government updated the PPG in July 2019 (Para 001; ID 64-001-20190722) in respect of openness and it now states:

Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation.*

5.73 In **Samuel Smith**,⁵³ the Supreme Court (Lord Carnwath) issued the lead judgement (with which Hale, Hodge, Kitchen and Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt disagreeing with Lindblom LJ in the Court of Appeal. The Supreme Court Judgement was handed down on 3 December 2019 following the previous appeals at this site, it held:

"22. *The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land."*

"39. *[...] As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law."*

"40 *Lindblom LJ criticised the officer's comment that openness is "commonly" equated with "absence of built development". I find that a little surprising, since it was very similar to Lindblom LJ's own observation in the Lee Valley case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and "urban sprawl", and with the distinction between buildings, on the one hand, which are "inappropriate" subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness."*

53

R (**Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC** [2020] UKSC 3 on appeal from EWCA Civ 489

5.74 In effect what the Supreme Court found was that “on a proper reading of the NPPF in its proper historic context, visual quality of landscape is not in itself an essential part of openness for which the green belt is protected”. Therefore, the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case. That reflects the fact that Green Belt policy is a spatial and not visual policy.

5.75 In a Secretary of State decision of November 2021⁵⁴ in dealing with visual openness on a site that has urban influences, paragraph 8.9 of the Inspector's conclusions state:

“In visual terms, external views of the site are relatively local and the M6 and A580, the Holiday Inn and the grandstands and other buildings of Haydock Park Racecourse lie close to its eastern, southern and northern boundaries respectively. Almost immediately west of the M6 is the extensive Haydock Industrial Estate (HIE). However, the proximity of these urban influences and features would do nothing to offset but, on the contrary, would serve to emphasise the permanent loss of openness, notwithstanding the relative containment of external views. Moreover, the proposed landscape bunding and tree screening round the site, intended to soften the appearance of the buildings in the landscape, would aggravate the obvious loss of the essential and fundamental openness of the Green Belt. That loss carries substantial planning weight against the appeal.” [4.17-22, 5.6]

5.76 With this in mind it is pertinent to look at the actual existing lawful baseline for the site as well as the permitted scheme that I understands comprises the Appellant's fallback position.

5.77 The existing site has a total of fourteen buildings spread across its area including a residential bungalow, workshops and store buildings.

5.78 The permitted fallback scheme indicated on the Proposed Site Plan a total of 33 buildings⁵⁵ including the retained bungalow and garage.

5.79 The scheme the subject of this appeal proposes a total of 92 buildings⁵⁶.

5.80 Therefore the proposal represents an increase of 557% on the existing number of buildings and 178% on the permitted number of dwellings notwithstanding issues of size, height etc.

5.81 Below, having previously set out my position on the quantum of proposed and existing development in section 3, I set out the relative position comparing the existing position at site with the permitted position and the existing position with the proposed scheme the subject of this appeal.

⁵⁴ Haydock Point - Land at A580 East Lancashire Road / A49 Lodge Lane Ref: APP/H4315/W/20/3256871

⁵⁵ For the purpose of this exercise I have counted each dwellinghouse whether detached, semi-detached or terraced as a building and each block of apartments as two buildings

⁵⁶ Comprising 56 dwellings, five apartment blocks, 25 garages and a substation building

	Footprint (% increase over existing)	Floorarea (GEA) (% increase over existing)	Volume (% increase over existing)
Existing	1086	1086	3533
Permitted	1610 (+48%)	3126 (+188%)	10,171 (+188%)
Proposed	4771 (+339%)	8593 (+691%)	29500 (+735%)

Table 1 – Existing, Permitted and Proposed Development at the Appeal Site

- 5.82 As detailed in section 3 and in the table above the proposed development will amount to circa 8600m² of Gross External floor area (GEA) including bin and cycle stores.
- 5.83 On all metrics the proposed development comprises a substantial increase in built development across the appeal site. The proposed development would amount to an increase of almost 700% in floorarea and over 700% volume of development over the existing situation.
- 5.84 Moreover, the height of the proposed buildings at up to 9.5 metres compared to the average height of existing development at 3.9 metres would make the proposed increased volume and footprint of development more evident at site.
- 5.85 I also note that the proposed development comprises a substantial increase on the permitted floor area at the appeal site (i.e. the baseline or fallback scheme permitted at appeal in 2021). In that respect I note the footprint of proposed buildings amounted to an increase of 3161m² over the permitted footprint⁵⁷ which equates to a 196% increase on the permitted footprint (i.e. the proposed footprint equates roughly to three times that already permitted).
- 5.86 In effect the scheme the subject of this appeal proposes a footprint and volume increase of almost three times that already permitted. The proposed development also has a maximum height 0.8 metres or almost 10% taller than that permitted⁵⁸.
- 5.87 The proposal comprises a significant increase in built form on the appeal site. In addition, the proposals will also increase the presence and prominence of built form noting that the development is at least two-storey throughout and could have a height of up to 9.5 metres.
- 5.88 The development will also extend up to the front boundary of the appeal site with Upper Halliford Road with flats and dwellinghouses now proposed to be sited within 13 – 17 metres of the Upper Halliford Road frontage compared to the permitted scheme where the proposed new houses are situated 55 – 60 metres from the Upper Halliford Road frontage.

⁵⁷ i.e. 4771 – 1610 = 3161m²

⁵⁸ The maximum permitted height permitted is 8.7 metres compared to 9.5 metres now proposed.

- 5.89 Finally by way of comparison I note the permitted development allowed at appeal in 2021 is situated behind open undeveloped land the fronts onto Upper Halliford Road and then proposes two rows of dwellings arranged on a north south axis across the width of the site. When viewed from Upper Halliford Road along the access road or through gaps in the frontage planting the existing development is viewed behind open land and has a depth of 41 metres east to west from the rear elevation of the easternmost building to the westernmost rear elevation opposite.
- 5.90 By comparison the development the subject of this appeal has an east west depth of 195 metres or 375% more than the permitted depth of development. This increased depth of development will be evident when viewed along the appeal site frontage with Upper Halliford Road as well as within the site and along the length of the public footpath that aligns the northern site boundary.
- 5.91 The length of elevation occupied by at least two storey development permitted at appeal in 2021 along the southern appeal site boundary is 40.5 metres whereas the appeal scheme now proposes 145 metres of at least two storey development. That equates to an increased length of two storey development along that boundary of 258%.
- 5.92 The loss of open frontage along Upper Halliford Road is particularly important in the context of the role then land plays in providing a spatial and visual gap between development when travelling along Upper Halliford Road and the experience of openness. The loss of the existing open frontage and its replacement with closely sited tall development will erode the gap and lead to urban sprawl. I am mindful that neighbouring development at 137 and 139 Upper Halliford Road is single storey in scale and not readily visible from the road frontage⁵⁹.
- 5.93 It is clear to me that the site frontage and the western part of the site are both open in both a spatial and visual sense. The centre of the site includes previously developed land with some low level single storey buildings spread out amongst some hardstanding that is largely used to park and manoeuvre vehicles.
- 5.94 The comparison is stark the current buildings on the site are modest in scale and have a limited impact on any views into the site whereas the proposed development proposes tall development to extend from the road frontage deep into the site and will be visible in public and private views.
- 5.95 The comparisons between the footprint and floorarea coverage of the existing, permitted and proposed buildings and the spread of development into the site are illustrative of the loss of openness in the spatial dimension.

⁵⁹ As can be confirmed at site and noted on the Appellant's Cross Sections such as B-B on A12146-D2300-P1 although any existing landscaping is excluded at 137 and 139 Upper Halliford Road but included on the appeal site

- 5.96 The volume of proposed buildings, the number of buildings, the increased height of development, the depth of development parallel with the public footpath and the proximity of the proposed development to the Upper Halliford Road frontage are illustrative of the loss of openness in the visual dimension.
- 5.97 Having regard to the existing and permitted fallback provided by the baseline the proposal would lead to a substantial and permanent loss of openness in both a spatial and visual context. I consider the adverse impact on openness in a spatial dimension to be substantial and the harm to carry substantial weight.
- 5.98 I consider that in addition to the substantial increase in permanent development as proposed the scheme will significantly increase the experiential nature of the development with passers-by along Upper Halliford Road and the public footpath, as well as users of the Park and neighbouring recreational lake and residents of properties backing onto the appeal site to the south and sharing part of its northern boundary exposed to the extent of development at the appeal site, thus enhancing the visual perception of sprawl, enclosure and loss of openness.
- 5.99 As to duration, the development would be permanent, a further aggravating factor.
- 5.100 A high degree of activity would be introduced onto the site, which presently involves only low key storage and some low key workshop activity. I have visited the site and area on a number of occasions over the past eight years and on recent occasions from outside the site no discernible activity was evident on the site. At my first visit in 2015 the level of activity at site was greater but could still be described as low to medium levels of activity. At the last appeal the level of activity was similar to that now operating at site although my impression was that more of the buildings has active occupants. The proposals would introduce greater levels of vehicle movements to, from and within the site, noise and activity from residential occupation of 80 dwellings, parking and manoeuvring of vehicles, light from houses, streetlamps, security lighting and vehicle headlights on seven days a week. These would be further aggravating factors reducing openness through generated activity.
- 5.101 In coming to these views I am mindful that this is an outline application with landscaping and appearance reserved for future consideration. However, my judgments are based on the Appellant's application and the material submitted to support the matters that are not reserved including layout and scale. Whilst I have referred to the illustrative material (and I note that this is the Appellant's best effort to show how the site can accommodate the quantum of development proposed) my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum and the submitted details in support of layout and scale.

- 5.102 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm in that regard. I also consider the experience of the site from both public and private views will lead to a substantial adverse impact on the appreciation of openness and again such matters lead to substantial harm. In coming to this conclusion I rely on both my analysis above as well as the perception of the site from neighbouring private dwellinghouses, parkland, recreational lakeland, adjacent roads and the footpath network that borders and provides views over the appeal site.
- 5.103 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.
- 5.104 I conclude that the harm arising from the substantial loss of openness of the Green Belt is substantial, given the existing nature of the appeal site and the scale of existing and proposed development and degree of harm to openness that is proposed and should carry substantial weight.
- 5.105 Therefore the proposed development would substantially erode openness in both the spatial and visual contexts having regard to the baseline as well as the extant permission.
- 5.106 The proposals will lead to substantial harm to openness and therefore regardless of the PDL status of various parts of the appeal site the proposals would not comprise an exemption under 149(g) of the Framework.
- 5.107 The harm to the openness of the Green Belt is substantial and should carry substantial weight and the proposals conflict with Policy GB1 of the Local Plan and section 13 of the NPPF.

Green Belt - Purposes

5.108 The site and area is classified as 'strongly performing' in the Council's Borough-wide Green Belt Assessment 2017 Stage 1 and therefore the site was considered unsuitable for development. As such the site was classified within the Council's updated Strategic Land Available Assessment (SLAA) as 'not developable'.

5.109 The site was also considered unsuitable for development in the Green Belt Assessment Stage 2 published in December 2018. The Assessment stated that the Sub-Area 396 (which covers the site) plays a fundamental role with respect to the wider Green Belt Local Area, and its release would harm the performance and integrity of the wider strategic Green Belt.

5.110 In the final assessment it noted:

"The parcel forms (almost all of) the essential gap between Ashford/Sunbury-on-Thames/ Stanwell and Upper Halliford, preventing development that would significantly visually and physically reduce the actual distance between settlements, and would result in the merging of settlements."

5.111 The purposes of the Green Belt are set out in NPPF at paragraph 138:

- a) *"to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."*

5.112 Inspector Hunter treated purposes (a) and (b) as conflicted by the dismissed scheme. In that context he noted that due to the urbanising nature of development and the extension of development eastwards toward Upper Halliford Road that conflict arose with purposes (a) and (b)⁶⁰:

"In terms of Appeal A, due to the urbanising nature of the development, along with the protrusion of development in an easterly direction, it would conflict with Purposes a) and b) of the Green Belt as set out in Paragraph 134 of the Framework."

5.113 He concluded that as neither the allowed/ permitted scheme (Appeal B) nor the dismissed scheme (Appeal B) extended westwards they would not conflict with purpose (c)⁶¹:

"I note that the western parts of the appeal site would be retained as open space and would therefore not conflict with the identified Purposes."

⁶⁰ DL33 at [CD10.1](#)

⁶¹ DL35 at [CD10.1](#)

- 5.114 In assessing Appeal B the Inspector noted that it was set back from Upper Halliford Road and retaining the western parts of the site open that the overall effect upon the purposes of the Green Belt would not be sufficient to have an adverse effect⁶².
- 5.115 Clearly the proposed development will urbanise the appeal site introducing large, tall buildings on the site frontage as well as deep into the appeal site well beyond any previously developed parts of the appeal site. the introduction of development of up to 9.5 metres tall along the site frontage and deep into the appeal site clearly urbanises the experience of travelling along Upper Halliford Road and erodes the gap that is perceived as one passes the appeal site.
- 5.116 The proposals will also lead to urban sprawl to the north of the large built-up area of Shepperton/ Halliford. Such unplanned urban sprawl is the antithesis of openness. The NPPF advises that:
- “ The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”*
- 5.117 This gap is particularly important given land to the west of Upper Halliford Road south of the M3 a string of built up development fronts the road save two gaps; one the appeal site and the other Sunbury Golf Course south of the appeal site and Charlton Lane. The appeal site plays an important role in preventing further ribbon development along Upper Halliford Road and the continued sprawl of a large urban area.
- 5.118 Accordingly, the development of this land fronting Upper Halliford Road and its urbanisation conflicts with paragraph 138(a) NPPF and the harm by way of this conflict is substantial and carries substantial weight against the proposed development.
- 5.119 The land south of the existing access road comprises open land that is not previously developed. The remnant frame of a poly tunnel remains at site but the land is open and the land contributes to the experience passing the site wherein development appears to be checked and a clear gap exists between the urban area to the south of the appeal site comprises Shepperton and Halliford (which along the site frontage comprises two bungalows) and land to the north comprising the on-site bungalow and the two storey flats at the site of the former Bugle Public House and the large urban area of Upper Halliford/ Ashford / Sunbury-on- Thames.
- 5.120 The appeal site and area comprise a gap between Ashford / Sunbury-on- Thames / Stanwell and Upper Halliford to the north and Shepperton and Halliford to the south, preventing development that, as a result of their close proximity, would result in the merging of these urban areas/ settlements. It also plays an important role in preventing further ribbon development along Upper Halliford Road and the merging of settlements.

⁶²

DL34 at CD10.1

- 5.121 For the same reasons as Inspector Hunter I maintain that conflict with NPPF 138(b) arises. I consider the conflict is moderate to significant and also carries substantial weight.
- 5.122 In terms of purpose (c) my objection is confined to the westward extension of development into the existing grazing land. I note the proposal extends development up to 130 metres west from the extent of PDL. With regard to a comparison between the extent of the permitted buildings the subject of the extant permission that comprises the Appellant's fallback position I note the proposal includes buildings 136 metres west of the most westward permitted building. The proposed development therefore fails to safeguard this land which is countryside and exhibits countryside characteristics.
- 5.123 The land south of the existing access road comprises open land that is not previously developed. The remnant frame of a poly tunnel remains at site but the land is open and the land contributes to the experience passing the site wherein development appears to be checked and a clear gap exists between the development to the south of the appeal site (which along the site frontage comprises two bungalows) and land to the north comprising the on-site bungalow and the two storey flats at the site of the former Bugle Public House.
- 5.124 The development of this land and its urbanisation does not safeguard the countryside and conflicts with paragraph 138(c) NPPF and the harm by way of this conflict is substantial and carries substantial weight against the proposed development.
- 5.125 Overall whilst acknowledging the previously developed nature of part of the appeal site the proposals, by reason of the at least two storey scale of development with an up to 9.5 metre tall height/ scale extending deep into the appeal site and closer to the site frontage, will visually erode the perceived narrow gap along the Upper Halliford Road and lead to the two pockets of development to the north and south appearing closer to one another.
- 5.126 Thus in both a spatial sense as well as a visual sense with the prominence of proposed development on the appeal site will add to the perception of sprawl and merger from Upper Halliford Road, the neighbouring park and the PROW network as well as failing to safeguard the countryside from encroachment.
- 5.127 Therefore, in the circumstances of this case conflict arises with the purposes.

Conclusion - Green Belt Harm

- 5.128 Any harm to the Green Belt must be given substantial weight in accordance with paragraph 148 of the Framework.
- 5.129 Having regard to the foregoing, I have demonstrated that, if permitted, the proposed development will result in Green Belt harm by way of:
- Inappropriateness;
 - loss of openness; and
 - conflict with purposes of Green Belts,
- 5.130 In coming to my conclusions I am cognisant that the Appeal dismissed in 2021 by Inspector Hunter proposed a smaller footprint of development than the appeal scheme, proposed less floorarea than proposed by the appeal scheme and less volume than the proposed appeal scheme. I am also cognisant that the buildings either side of the access road were set back a minimum of 32.5 metres behind a no development area and did not extend westwards onto the grazing land.
- 5.131 Table 2 below compares the quantum and disposition of development between the current proposed appeal scheme and the dismissed appeal scheme.

	Footprint	Floorarea (GEA)	Volume
Dismissed Appeal Scheme 2021	3436	7162	26000
Proposed Appeal Scheme 2023	4562	8593	29500
Increase from Dismissed Appeal	+33%	+20%	+13.5%

Table 2: Comparison Dismissed Appeal Scheme and the Appeal Proposal

- 5.132 It is clear that not only does the appeal scheme represent a substantial increase in development over both the existing development at the appeal site and the permitted development that comprises the fallback at the appeal site but it also represents a significant uplift on the footprint, floor area and volume of development previously dismissed at appeal.
- 5.133 I also include below a table that compares the proximity of buildings to Upper Halliford Road (i.e. the eastern appeal site boundary) and the maximum height of buildings in this area south and north of the existing access road.

	Existing		Fallback		Dismissed		Proposed	
	North	South	North	South	North	South	North	South
Minimum set-back from the Upper Halliford Road Boundary	13m	28m	13m	55m	40m	32.5m	9.5m	-
Maximum Height of Buildings	5.8 metres		8.7 metres		8.98 - 10 metres		9.5 metres	

Table 3: Comparative Siting to Upper Halliford Road and Building Heights

- 5.134 To ensure consistency Table 3 uses the set-back distance from the boundary with highway land. Reference to North and South is to the land north and south of the existing access road.
- 5.135 Table 3 illustrates that the proposed scheme brings taller development closer to the Upper Halliford Road frontage than the existing, permitted or dismissed scenarios.
- 5.136 Therefore, not only will it lead to a loss of openness across the appeal site but it will also be more prominent than the existing and permitted schemes.
- 5.137 I have shown that this harm, should all attract substantial weight.
- 5.138 The proposals therefore conflict with Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 and Section 13 (Protecting Green Belt Land) subject to very special circumstances of the National Planning Policy Framework 2023.

Other Harm - The Housing Mix

- 5.139 Policy HO4 of the Core Strategy and Policies Development Plan Document 2009 requires at least 80% of the total number of dwellings proposed to comprise smaller units of 1 and 2 bedrooms.
- 5.140 The Council published a Supplementary Planning Document “Housing Size and Type” in 2012, it notes that, *‘...where there is a predominance of larger dwellings a mix with less than 80% one and two bedroom dwellings may be appropriate with a greater proportion of 3 bedroom dwellings. However, the majority should still have one and two bedrooms.’* At this stage consistent with Policy HO4 I consider the SPD to carry significant weight.
- 5.141 The planning application forms confirm that the proposals comprise:
- 24 one and two bedroom flats;
11 two bedroom houses;
34 three bedroom houses; and
11 four bedroom houses.
- 5.142 These details are confirmed on the Indicative Proposed Site Plan⁶³ which is entirely consistent with the footprint of all buildings included on the plan provided to discharge layout details⁶⁴. The Statement of Common Ground confirms the proposed mix⁶⁵.
- 5.143 Therefore in response to the Inspector’s query I consider that these details to be before the decision maker and cannot be determined at reserved matters stage.
- 5.144 The number of smaller units (1 bed and 2 bed units) is 35 out of the total 80 units and equates to 43% of the total units. Of the open market houses only 11 out of 40 just 27.5% comprise smaller 1 and 2 bedroom units.
- 5.145 Therefore, the proposal fails to comply with Policy HO4 of the Core Strategy and Policies Development Plan Document 2009 which requires at least 80% 1 and 2 bedroom units and the SPD which allows a relaxation in areas of different character (such as this) where a majority (i.e. at least 51%) of smaller units would be expected.
- 5.146 The emerging Plan should only carry limited weight and the evidence base standing behind the plan has yet to be examined and a such should also carry limited weight.
- 5.147 Draft Policy H1(3) requires that:

⁶³ Plan A12146-D2100-P1

⁶⁴ Plan A12146-D2005-P1

⁶⁵ SoCG at paragraph 4.7

“Development proposals will be expected to contribute to meeting identified housing needs by having regard to the housing type and size mix as set out in the Strategic Housing Market Assessment or any similar evidence for market and affordable units.”

- 5.148 The evidence base includes the 2019 Strategic Housing Market Assessment 2015 and Update 2019 (SHMA). Therein it includes requirements for the various tenures of housing on new sites. With regard to affordable rent dwellings the SHMA advocates for 35 – 40% of the dwellings to be 1 bedroom units. The appeal scheme proposes just 27% of the units as one bedroom units.
- 5.149 In terms of affordable rent 3 bedroom units the SHMA advocates for 25 – 30% units whereas the proposal provides 43% 3 bed units.
- 5.150 In terms of affordable ownership the SHMA requires a mix of units comprising:
- | | |
|------------------|----------|
| 1 bedrooms units | 15 – 25% |
| 2 bedroom units | 40 – 45% |
| 3 bedroom units | 25 – 35% |
- 5.151 In comparison to this advocated mix for affordable ownership units the appeal scheme proposes 100% 1 bedroom units.
- 5.152 Therefore, the proposed mix of dwellings does not comply with the less prescriptive emerging Local Plan Draft Policy H1(3) as informed by the SHMA.
- 5.153 The proposals falls substantially short of the policy requirement of 80% and indeed do not provide a majority of units as one and two bedroom dwellings and therefore conflict with Policy HO4. Such harm attracts moderate adverse weight in the planning balance. Given the current housing supply position in Spelthorne if this was the only matter of conflict identified by the Inspector it would not, in my view, justify refusal of planning permission. However, it does comprise an “other harm” to be weighed in the planning and Green Belt balance.

Amenity of Neighbouring Properties

- 5.154 The proposal is considered to be capable of having an acceptable relationship and therefore an acceptable impact on the amenity of existing neighbouring residential properties, apart from those properties along Halliford Close, i.e. alongside the southern site boundary.
- 5.155 The Siting Parameters Plan⁶⁶ now fixes the details of layout pursuant to the outline planning application.
- 5.156 This plan shows that to the rear of the ten existing semi-detached and detached dwellinghouses fronting Halliford Close (i.e. nos. 6 – 24 Halliford Close) are fifteen proposed semi-detached and terraced dwellinghouses backing onto the same boundary. The proposed dwellinghouses are set 11 – 13 metres from the boundary. However, the Proposed Siting Parameters Plan includes a note to state that the proposed position of the facades of dwellings may vary by up to 1.0 metre. Assuming that to result in the dwellings highlighted above being moved 1 metre southwards the gap to the boundary would reduce to 10 – 12 metres.
- 5.157 Whilst the Note attached to the Parameters Siting Plan also states that all houses are 2 storeys, I note that does not relate to apartments and two storey can include rooms accommodated in the roofspace and thus comprise three storeys of accommodation as appears evident from the Appellant's cross section drawing highlighted above.
- 5.158 The footprint size of the dwellings is fixed by the "layout plan" and the distance from the proposed 15 dwellings to the southern boundary ranges from 10 – 13 metres.
- 5.159 Scale as previously highlighted comprises the sum of the depth, width and height of the proposed buildings. No details are available on any plan to be approved of relative eaves or ridge heights of the individual buildings (or indeed whether any ridge is proposed and not just flat roofed buildings). However, scale is now a matter to be determined at this stage and the Proposed Development Zone Height Parameter Plan⁶⁷ comprises the sole information available pertaining to the height of the proposed buildings. That plan does not distinguish height across the developable area of the appeal site and allocates a single maximum height of 9.5 metres (21.3m AOD) for all the development proposed.
- 5.160 I have already highlighted my misgivings about such a matter being determined on the basis of the paucity of information that accompanies this application. However, given the indication by the Inspector I urge a precautionary approach noting that the indicative cross sections appear to show eaves heights of 6 metres and the maximum ridge height is specifically referred to as 9.5 metres. Accordingly along the southern boundary I would invite the Inspector to assume that the proposed dwellings would have a ridge height of 9.5 metres with eaves set at 6 metres.

⁶⁶ A12146-D2005-P1

⁶⁷ A12146-D2002-P1

- 5.161 As I have already noted such building heights are tall for traditional two storey dwellings and are indicative of buildings that accommodate a third storey of accommodation.
- 5.162 No information is provided about the height of the buildings in Halliford Close and I note the existing north - south cross section⁶⁸ falls just short of including those dwellings and no topographic information is provided with the application the subject of this appeal.
- 5.163 However, the previous application the subject of the dismissed appeal in 2021 included cross sections across the site⁶⁹ including Halliford Close which confirms that the dwellings backing onto the southern boundary of the appeal site have eaves heights of 4.9 metres and ridge heights of 7.6 metres. This accords with my estimates based on observations at site.
- 5.164 On that basis 6 metre tall eaves would be 22.5% taller than those in Halliford Close and 9.5 metre tall buildings would have a height 25% taller than the existing neighbouring buildings.
- 5.165 The layout details show 15 dwellings arranged as semi-detached and terraced dwellinghouses. The dwellings back onto the rear boundaries of 6 – 24 Halliford Close which occupies a length of the southern boundary of 90 metres. The dwellinghouses account for a total width of development of up to 9.5 metres in height of 72 metres or 80% of that part of the boundary.
- 5.166 The impact on outlook from existing dwellings of such a length and height of development would in my view be oppressive. I do not consider that existing landscaping within the control of the appeal site can be relied on to provide any meaningful screening from the existing dwellinghouses. The reason for my pessimism is that the gardens of the proposed dwellings are relatively short (10 – 12 metres) and any existing tall landscaping would lead to a significant loss of light and shadowing across those gardens and the rear elevations of the proposed dwellings such that there would be significant pressure for its removal.
- 5.167 Given scale is to be determined at this stage and maximum building heights along this boundary are 9.5 metres and cross sections show a third storey accommodated in the roofspace of the proposed buildings, applying a precautionary approach, I would recommend that the decision maker should assume that the building accommodates three levels of accommodation.
- 5.168 The Council's Supplementary Planning Document on the Design of Residential Extensions and New Residential Development 2011 (SPD) sets out requirements for all new residential development including separation distances and amenity provision.

⁶⁸ A12146-F2300-P1

⁶⁹ A11718-F0200-P1

- 5.169 The SPD in para 3.6 acknowledges that *‘most developments will have some impact on neighbours, the aim should be to ensure that the amenity of adjoining occupiers is not significantly harmed.’* It sets out minimum separation distances for development to ensure that proposals do not create unacceptable levels of loss of light, be overbearing or cause loss of privacy or outlook. These are set as a minimum for 2 storey development of 10.5m for back to boundary distance, and 21m for back to back development. Three storey development has a back to boundary distance of 15m and back to back distance of 30m.
- 5.170 I acknowledge that the proposed layout details would meet the requirements if the development was restricted to two storeys. However if the development incorporated a third storey then it is clear that the 15 metre separation distance to the rear boundary to ensure development does not unacceptably reduce outlook from garden areas or be overbearing on such areas would not be met. In my view there is simply not enough information on scale to enable a reasoned judgement on impact to be reached.
- 5.171 However, if the Inspector took the view that he had enough information on the basis of the information provided, applying the precautionary approach I have outlined, the development would be harmful but given the paucity of information before the Inquiry I have had to make a number of assumptions.
- 5.172 In addition the shorter garden depths for the proposed development with third storey windows within 10 metres of the rear gardens boundary of properties in Halliford Close would lead to a loss of privacy to those using such gardens. I note this would be the southern end of the gardens to properties in Halliford Close. However I do consider this element of the objection to be a minor issue.
- 5.173 In my view insufficient detail has been provided to be satisfied that the proposed scale of these dwellings will ensure a satisfactory relationship including sufficient separation distance and as such the proposal does not currently conform to the SPD and Policy EN1 of the Core Strategy.
- 5.174 I attach moderate weight to the harm arising from such matters

6 The Appellant's "Other Considerations" Case

- 6.1 I have already concluded that the proposal would not comprise an exception under paragraph 149(g) NPPF as amongst other matters it is not confined to previously developed land, would have a greater impact on openness than the existing development and would lead to a substantial loss of openness to the Green Belt even if it was found to contribute to meeting an identified affordable housing need.
- 6.2 In this section I assess the other considerations relied on by the Appellant as outlined at 4.4 of their Statement of Case and I have also considered some additional matters namely the sustainability of the location and economic benefits. I then consider whether they are capable of clearly outweighing the harm I have identified.
- 6.3 I do not set out the dispute between the parties on the impact of the proposal on the Green Belt in terms of openness and purposes. I do not consider such arguments comprise "other considerations" that weigh in favour of the grant of permission. Instead, if supported (and I do not consider they should be), they would go to the degree of weight attributed to harm.
- 6.4 Therefore, the proposed development comprises inappropriate development in the Green Belt. It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.
- 6.5 In these circumstances, I have already established that the development is inappropriate and will lead to an erosion of openness as well as leading to sprawl and merging of settlements and encroaching into the Green Belt. It also provides a non-compliant mix of dwellings and will harm the amenity of existing occupiers of neighbouring dwellings.
- 6.6 Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.
- 6.7 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**⁷⁰, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

⁷⁰

R (Chelmsford) v First Secretary of State and Draper [2003] EWHC 2978

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

6.8 In **Temple**⁷¹, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.

6.9 Further guidance was provided by the Court of Appeal⁷², in which the Carnwath, LJ (as he then was) stated inter alia that:

"21. [...] The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. [...]"

and

"26 [...] I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view. I prefer the formulation used by Sullivan J himself in a judgment the previous year on somewhat similar facts, Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509, para 70, where (also in the context of para 3.2 of PPG2) he said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy." (Original emphasis.)"

6.10 In the context of Policy HO3 Affordable Housing the requirement is for 50% of housing on sites to be affordable where the development comprises 15 or more dwellings (gross) or the site is 0.5 hectares or larger irrespective of the number of dwellings⁷³.

⁷¹ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin)

⁷² **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692

⁷³ It is factually wrong to characterise the Policy as requiring 40% provision on qualifying sites and thus the weight accorded by the Appellant has an incorrect foundation.

- 6.11 Therefore the provision of 50% housing at the appeal site comprises the policy requirement and cannot rationally in that context be considered to comprise a contribution to affordable housing beyond the policy requirement. However it remains a benefit of the scheme.
- 6.12 The Council has historically fallen short of its housing targets and this is reflected in the HDT results for the Borough. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land. The Council can demonstrate a supply of 3.52 years and it is agreed that it is not necessary for the Inspector to determine whether the Council's figure or the Appellant's should be preferred as the weight to the benefit will not change within the agreed range.
- 6.13 The Appellant's fallback scheme permitted 31 new dwellings and retained the bungalow at site, thereby proposing a total of 32 dwellings. The extant fallback scheme delivered policy compliant affordable housing at 50% of the total number of dwellings.
- 6.14 Therefore at up to 80 dwellings the proposed scheme will deliver 48 more dwellings than the appeal scheme of which 24 would be affordable housing. This uplift in housing is a benefit of the scheme.
- 6.15 In attributing weight to the provision of housing including policy compliant housing for the scheme dismissed at appeal in 2021 Inspector Hunter allocated significant weight overall to housing including market housing, affordable housing and specialist housing and care home provision⁷⁴. I note that scheme related to 43 dwellings and 62 care home apartments.
- 6.16 I consider that the uplift proposed in dwellings (excluding the care home) is broadly equivalent to the quantum of development dismissed at appeal in 2021 and thus the weighting attributed by that Inspector comprises an appropriate starting point.
- 6.17 In his decision of January 2022 I note Inspector Worden acknowledged that the Council was unable to demonstrate a five year housing land supply and had a HDT result below 65% and in allowing an appeal for 206 new apartments in Staines town centre allocated significant weight to housing⁷⁵. In her decision of July 2023 Inspector Butcher determined that significant weight should be given to the provision of 226 build to rent apartments incorporating affordable build to rent apartments⁷⁶.
- 6.18 On that basis given the proposed uplift of 48 dwellings of which 24 are affordable I consider significant weight to be the consistent weighting to housing. However, for the purpose of this appeal I note that the Council's emerging Local Plan has been paused and the housing land supply position has not improved since the three appeal decisions I have quoted and therefore I consider that it is appropriate to allocate substantial weight to the benefit overall of providing housing at the appeal site.

⁷⁴ DL45 and 46 [CD10.1](#)

⁷⁵ See DL59 of APP/Z3635/W/21/3280090 at [CD10.2](#)

⁷⁶ See DL33 of APP/Z3635/W/22/3312440 at [CD10.3](#)

- 6.19 As detailed in section 4 the appeal site comprises a draft allocation in the emerging Local Plan. The plan is paused and it is common ground that limited weight should be given to the emerging Local Plan. Given the level of objection to the Local Plan and Green Belt releases to meet housing need it cannot be assumed that draft allocation will be found sound by examining Inspectors and adopted by the Council. Given the proposed allocation is subject to objection as well as support and has yet to be examined, it is not at a stage where it accrues weight. My view is I believe consistent with the NPPF and I consider the emerging Local Plan to carry limited weight and the draft allocation of the land likewise should carry limited weight in support of the application the subject of this appeal. I am fortified in this view by the fact that the allocation only emerged at pre submission draft stage and has not been the subject of public consultation.
- 6.20 I do not consider the Secretary of State for Levelling up, Housing & Communities and Minister for Intergovernmental Relations letter of September 2023 changes the position in respect of this draft allocation.
- 6.21 I note the Appellant relies on the removal of a bad neighbour as a benefit of the scheme. At the previous appeal it was noted that the level of complaint about activity at the site was low and attracted moderate positive weight⁷⁷. In the past 10 years the Council has only received a very limited number of complaints associated with lorry movements and bonfires at the appeal site. However, the fallback scheme already secures the removal of the so called bad neighbour and the greater harm arising from this application/ appeal is not necessary to secure this benefit. I therefore consider the removal of the so called bad neighbour should attract moderate weight consistent with the permitted scheme.
- 6.22 The provision of public access to the open space at the rear of the appeal site, and the restoration of the land, is of some benefit to the area. However, this part of Upper Halliford and Shepperton has ample public open space and Halliford Park is located opposite the appeal site. The Council's draft Open Space Assessment November 2019⁷⁸ states that the Halliford and Sunbury West ward has more than sufficient public open space. Halliford Park is immediately to the east of the application site and Donkey Meadow is close by with the area also supported by a network of public footpaths. I consider the greatest benefit from these works will arise to the occupants of the proposed estate. I note the fallback scheme proposes the restoration of this land. As such, only limited to moderate weight should be given to this benefit in favour of the proposal.
- 6.23 As noted by Inspector Hunter the appeal site comprises a relatively sustainable location, with good access to local services and facilities, along with nearby public transport links that provide access to a wider area, on that basis he attributed moderate weight to such matters as a benefit I concur with such a weighting.

⁷⁷ See DL50 at [CD10.1](#)

⁷⁸ [CD6.7](#)

- 6.24 The provision of a pedestrian crossing would be a benefit of the scheme. However it is secured as part of the fallback scheme and the additional harm arising from the appeal scheme is not necessary to secure such a benefit. I do not consider that the pedestrian crossing attracts anything other than limited weight in the context of this application.
- 6.25 The Appellant considers that local support for the application is a matter that weighs in favour of the appeal. I am not sure how such a matter can be considered to weigh in favour of the grant of permission given that the application the subject of this appeal attracted eleven letters of objection and none of support. The numerous reasons for objection are summarised at paragraph 5.4 of the committee Report at CD1.41.
- 6.26 The support or objection of neighbours is not of itself a material planning consideration and carries no additional weight in the planning balance either in support or against the proposed development.
- 6.27 Finally I note the Appellant considers that the “provision of a strategic gap” comprises a matter that weighs in favour of the grant of planning permission. For the reasons I have previously articulated I do not consider that any benefit arises and indeed I have identified harm from the form of development proposed. Therefore, I consider that such a matter attracts no weight in the planning balance.
- 6.28 I also consider economic benefits arising from the development of the site for housing (such as the construction spend and expenditure by future residents in the economy) would weigh in favour of the grant of planning permission but is balanced by the loss of employment land and carries limited positive weight.
- 6.29 I do not consider that these matters when balanced against the identified harm amount to very special circumstances.

7 The Planning Balance and Summary

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 By reason of the local plan policy conflict identified above, the proposed development does not accord with the development plan taken as a whole given it introduces inappropriate development into the Green Belt that erodes openness and conflicts with the purposes of the Green Belt, fails to provide a satisfactory mix of dwellings and leads to harm to the amenity of neighbouring occupiers.
- 7.3 As I have already demonstrated the application of policies in the Framework relating to the Green Belt provide a clear reason for refusing the proposal. Thus the tilted balance, otherwise engaged by the HDT and 5YHLS position, is disengaged in this case.
- 7.4 Inappropriate development is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.5 As explained above in section 5, the other Green Belt harm by loss of openness leads to substantial harm at the upper end of such harm and must carry substantial weight. The appeal site and area contribute significantly to safeguarding the countryside from encroachment, preventing urban sprawl and preventing settlements merging.
- 7.6 Added to this is “any other harm” arising from the failure to provide a satisfactory mix of dwellings attracting moderate adverse weight and the impact on the amenity of neighbours attracting moderate adverse weight.
- 7.7 The weight of factors against the grant of permission presents a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations such that “very special circumstances” exist. This high bar is illustrated in an appeal decision in St Albans⁷⁹ wherein the Inspector noted:
- “The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but **decisively**.”* Emphasis added.
- 7.8 The factors relied on by the Appellant include the contribution to housing (including affordable housing) which collectively carry substantial weight.

⁷⁹ APP/ B1930/W/19/3235642 at Burstons Garden Centre

- 7.9 In assessing the appropriate weight to be given to the delivery of housing in the circumstances of a current deficient housing land supply position I am mindful that housing land supply position is a snapshot in time. Whilst it may endure for some time it is not expected to comprise a permanent state of affairs (as the adoption of a local plan would likely be unsound in those circumstances). In contrast permanence is one of the essential characteristics of the Green Belt together with openness and the proposals would lead to the permanent loss of the openness of this part of the Green Belt. The permanent loss of land that positively contributes to the openness of the Green Belt would not change and the adverse impacts would endure.
- 7.10 I consider that the draft allocation of the appeal site in the paused local plan should carry limited weight and note that the so called bad neighbour is removed from the site by the extant planning permission at the site and thus is not only a benefit of this proposal but carries moderate weight in favour of the proposal. I consider the provision of open space to attract limited to moderate weight in favour of the scheme noting the fallback scheme secured the restoration of the land and the area benefits from a surplus of public open space.
- 7.11 The proposed pedestrian crossing was also proposed as part of the fallback scheme and attracts limited positive weight whilst the location of the site comprises a benefit of the scheme that attracts moderate weight.
- 7.12 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they “clearly outweigh” the harms to amount to “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of 148 NPPF.
- 7.13 I am cognisant of the Written Ministerial Statement of July 2015, which sets out the Secretary of State’s own view that need is unlikely to clearly outweigh harm to the Green Belt to justify the loss of Green Belt land and the grant of planning permission. I consider part of the rationale behind such an approach must lie in one of the two essential characteristics of the Green Belt being their permanence.
- 7.14 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme. The construction employment and spend associated with the additional houses is modest in scale. Any economic benefits are tempered by the conflict with the adopted development plan and the loss of employment land. Overall the position on economic impact in respect of the economic dimension of sustainable development is positive but carries limited positive weight.
- 7.15 There are social benefits from the provision of housing and the provision of affordable housing. Such matters weigh in favour of the grant of planning permission.
- 7.16 I consider that the proposal will lead to substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt which adversely affect the Green Belt. The impact on the environment is substantially negative.

- 7.17 Overall, notwithstanding the benefits of the scheme taken together, I do not consider these to “clearly outweigh” the harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 148 of the Framework.
- 7.18 I therefore consider that in this case, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i) and therefore the so called tilted balance is disengaged.
- 7.19 The proposed development conflicts with important development plan policies, and as such conflicts with the development plan taken as a whole. In addition, the policies of the Framework provide clear reasons to refuse permission, and material or other considerations would not amount to very special circumstances or otherwise justify the grant of permission. As such, I invite the Inspector to dismiss the appeal.
- 7.20 Given my conclusion it is not necessary to undertake the decision making process in the context of the tilted balance.
- 7.21 If the Inspector was to conclude that very special circumstances did exist (a view I do not share) then the outcome of that process is that permission should be granted and it would not be necessary to go further than undertaking the conventional Green Belt planning balance exercise.
- 7.22 If the Inspector is minded to allow this appeal, I would request that the conditions that have been provided in advance of the Inquiry are imposed. In addition, a section 106 obligation to deliver and secure affordable housing is necessary.

Appendix A

Aerial Images

© Google





