

Town and Country Planning Act 1990

Appeal by LW Developments Ltd

Northaw House, Coopers Lane, Northaw, EN6 4NG

Planning Application Reference 6/2021/0072/MAJ  
Listed Building Application Reference 6/2021/0071/LB

## Draft Statement of Common Ground

15<sup>th</sup> August 2022

# Contents

1.	Introduction	2
2.	The Proposed Development	4
3.	The Appeal Site	5
4.	Relevant Policies and Guidance	9
5.	General Matters Agreed	13
6.	Financial Viability	14
7.	Green Belt	16
8.	Heritage	18
9.	Planning Obligations	21
10.	Planning Conditions	22
A1.	Appeal Core Documents List	23

# 1 Introduction

- 1.1 This Statement of Common Ground is prepared on behalf of LW Developments Ltd (“the Appellant”). It relates to and is submitted in support of an appeal (“the Appeal”) pursuant to Section 78 of the Town and Country Planning Act 1990, in response to the decision by Welwyn Hatfield Borough Council (“the Council”) to refuse to grant planning and listed building consent in relation to planning application 6/2021/0072/MAJ (“the planning application”) and 6/2021/0071/LB.
- 1.2 Where relevant references are made to Core Documents (CD). A full list of these documents is contained within Appendix 2.

## The Proposed Development

- 1.3 The appeal proposes the following development (as set out on the Council’s decision notice, which contains a similar description to that on the application form):

*“Repair, refurbishment and conversion of Northaw House to form 11 apartments (including refurbishment of existing single caretaker’s flat) and underground parking area, the Ballroom Wing to form 2 dwellings, the Stable Block to form 1 dwelling, refurbishment of existing dwelling at Oak Cottage, construction of 2 new Gate Lodge dwellings, 4 new dwellings on the East Drive, 3 new dwellings within the Walled Garden, 7 new dwellings within the Settlement Area, refurbishment of the Walled Garden, refurbishment of access routes and reinstatement of old route, provision of hard and soft landscaping, car parking and supporting infrastructure.”*

## Reasons for Refusal

- 1.4 The Council refused the planning application, on 26<sup>th</sup> May 2021, for the following reasons (see CD3.6):
- 1. The proposed development, which is located on land designated as Metropolitan Green Belt, would constitute inappropriate development, causing harm to the openness and purposes of including land in the Green Belt, which is by definition harmful to the Green Belt. Additionally further harm is caused to the visual amenities of the Green Belt. No very special circumstances appear to exist which outweigh the potential harm of the development to the Green Belt by reason of inappropriateness, and the other harm identified. Accordingly, the proposal fails to comply with Policies RA10 and D2 of the Welwyn Hatfield District Plan 2005, Policy SADM 34 of the Emerging Local Plan 2016, the Council’s Supplementary Design Guidance and the National Planning Policy Framework.*
  - 2. The proposed development would materially harm the setting of heritage assets on the site. Whilst this is less than substantial harm and there would be a benefit to restoring the heritage assets on the site, it is not considered that this benefit would outweigh the harm identified to the setting and significance of the designated heritage assets on site. As such, the proposal is contrary to Policy SADM15 of the Emerging*

*Local Plan 2016, National Planning Policy Framework and the Planning (Listed Buildings and Conservation Areas) Act 1990.*

3. *The applicant has failed to satisfy the sustainability aims of the plan and to secure the proper planning of the area by failing to ensure that the development proposed would provide a sustainable form of development in mitigating the impact on local infrastructure and services which directly relate to the proposal and which is necessary for the grant of planning permission. The applicant has failed to provide a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority considers that it would be inappropriate to secure the required financial and non-financial contributions by any method other than a legal agreement and the proposal is therefore contrary to Policies H2, IM2, M4 and H7 of the Welwyn Hatfield District Plan 2005, Policies SADM1, SP7 and SP13 of the Emerging Local Plan 2016.*

- 1.5 The Council refused the listed building application, on 26<sup>th</sup> May 2021, for the following reason (see CD3.7):

1. *The proposed development would materially harm the setting and significance of the Grade II Listed Buildings and whilst this is considered to result in less than substantial harm, public benefits to outweigh the identified harm do not exist. As such the proposal is contrary to SADM15 of the Emerging Local Plan 2016; National Planning Policy Framework and the Planning (Listed Buildings and Conservation Areas) Act 1990.*

#### **Scope of This Document**

- 1.6 This document sets out matters on which the Appellant and the Council are agreed, and some areas of disagreement.

## 2 The Proposed Development

2.1 This appeal seeks full planning permission and listed building consent for the repair, refurbishment and residential conversion of the Grade II listed buildings of Northaw House and its Stable Block, and the curtilage listed Ballroom Wing and Orchard Cottage. It is also proposed to construct new-build enabling development within the grounds of Northaw House, to fund the conversion of the listed buildings and repair of curtilage listed structures including the walled garden. The application proposals can be summarised as follows:

- Repair, refurbish and convert Northaw House to form 3 x 1-bedroom apartments, 4 x 2-bedroom apartments, and 1 x 3-bedroom apartment, and extend the basement to form a car parking area;
- Repair, refurbish and convert the Edwardian Wing of Northaw House to form 1 x 1-bedroom apartment and 2 x 2-bedroom apartments;
- Repair, refurbish and convert the Ballroom Wing to form 2 x 3-bedroom semi-detached houses;
- Repair, refurbish and convert the Stable Block to form a single 3-bedroom detached house;
- Repair and refurbish Oak Cottage to form a single 3-bedroom house;
- Construct 3 x 4-bedroom detached houses within the walled garden;
- Construct 2 x 3-bedroom detached houses as Gate Lodges;
- Construct 1 x 3-bedroom detached house, 4 x 4-bedroom semi-detached houses and 2 x 4-bedroom detached houses within the Settlement Area;
- Construct 4 x 3 bedroom (semi-detached) houses adjacent to the East Drive;
- Refurbish the wall of the walled garden;
- Construct new access routes and introduce highway safety improvements;
- Provide extensive new landscape planting.

2.2 Planning and listed building consent has already been granted for the majority of the proposed development (in relation to applications 6/2019/0217/MAJ and 6/2019/0218/LB), with the exception of the 2 Gate Lodges and 4 East Drive houses. The issues of disagreement between the parties relate to the 6 additional new-build houses, the justification for them in relation to financial viability, and their acceptability with regard to Green Belt and heritage considerations.

# 3 The Appeal Site

## Heritage Assets

3.1 Originally known as Nyn Lodge, Northaw House sits at the centre of its own estate. The appeal site contains all of the land which is now associated with this estate, and it is around 10 Ha in area. The layout of the site and surrounding area are shown on the map below, which also identifies the location of the designated heritage assets within and adjacent to the appeal site.

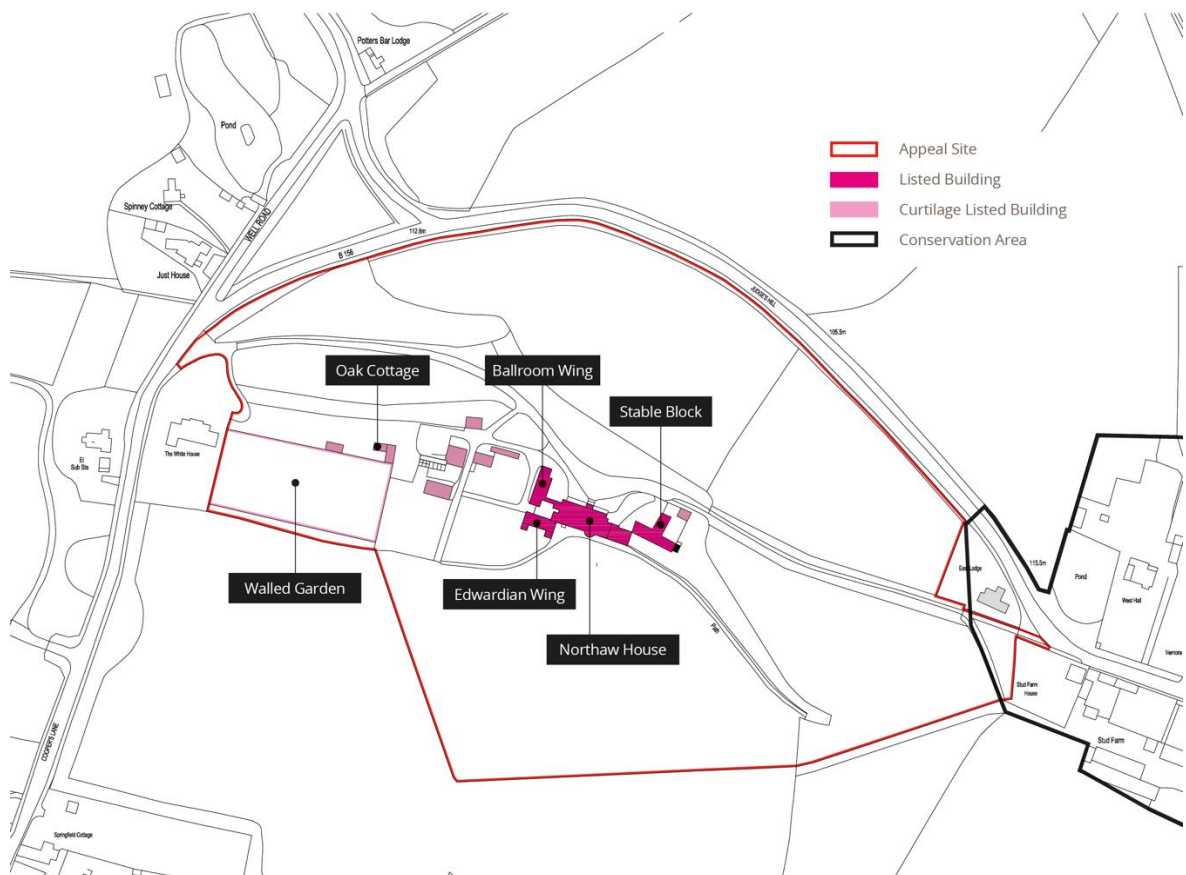


Figure 1: the appeal site boundary and designated heritage assets

3.2 Northaw House and its associated Stable Block are both Grade II listed buildings. Several curtilage listed buildings and structures also exist within the appeal site. The eastern boundary of the appeal site overlaps with the Northaw Conservation Area, which covers the nearby village, but generally excludes the appeal site. The Conservation Area, the listed buildings of Northaw House and the Stable Block, and other curtilage listed structures and buildings are all designated heritage assets. The appeal site is also designated as an Archaeological Area of Significance (AAS 42) in the Welwyn Hatfield District Plan 2005.

3.3 Northaw House (including the Main House, West Wing, Ballroom Wing and Conservatory) and the Stable Block are separately listed Grade II buildings. Northaw House was built in the Post-Restoration style in 1698 with two-storey painted brickwork elevations over a basement, and is seven bays wide, with a three bay pediment and three sets of quoins on the front elevation.

The second floor is set within a mansard roof. The house was much extended and embellished during the 18<sup>th</sup> and 19<sup>th</sup> centuries. Later additions include the West Wing, Ballroom Wing, Porch and Conservatory. It was listed Grade II in 1972.

- 3.4 The adjacent two-storey Stable Block is also Grade II listed. It was built in the mid-late 18<sup>th</sup> century in red brick with a slate roof and a domed turret in the centre of the roof, which has been removed to ensure its preservation. The building is flanked by a derelict single storey building and an open-fronted carhouse which joins the rear of the Victorian conservatory to the main house.
- 3.5 There are informal grounds to the front and rear of the building, and flanking the present entrance driveway, from Coopers Lane to the west. The main façade of the house, as well as the open land to the north of the House, can be seen from Judges Hill to the north, on the top of the rise. Within the grounds there were a number of outbuildings, although all that remains now is a gardener's cottage (Oak Cottage), and a walled garden, both of which are curtilage listed.

### Recent History

- 3.6 Northaw House and the attached Ballroom Wing were used as offices for an Architectural practice (Architects Co-Partnership), from 1972 to 2014, when the practice ceased to trade. The building's previous use as offices did not provide the investment that was required to maintain the historic buildings in a good condition. The building has been vacant since 2014.
- 3.7 It is agreed that it is unrealistic to expect that Northaw House could now return to its original use as a single residential dwelling, given the substantial cost of purchasing and repairing the property, and in light of the lack of interest from the market following previous marketing. It is also agreed that the ideal course of action in the circumstances would be for Northaw House to be converted to residential apartments, in the way which has already been granted planning and listed building consent (under applications 6/2019/0217/MAJ and 6/2019/0218/LB). If implemented, such a residential use would provide a future source of funding and an incentive on behalf of its residents to ensure the building was well maintained. It is agreed that this would represent the building's optimum viable use.
- 3.8 For similar reasons, it is also agreed that the optimum viable use of the Grade II listed Stable Block, and the curtilage listed Ballroom Wing and Orchard Cottage, is as residential dwellings.
- 3.9 Northaw House is in a poor condition, having been empty since 2014. Its condition was deteriorating whilst it was in office use, but it significantly worsened since it has been empty, particularly following the theft of lead from the roof, which resulted in water damage throughout the building. LW Developments installed scaffolding with a temporary metal roof and plastic sheeting over the building soon after this theft became apparent, but this can only be a temporary solution, and both parties are keen to ensure that the building's future is secured in an appropriate manner as soon as possible. Roof Slates have been removed in order to allow the property to dry out. Where this is alleged to be in breach of listed building control the Appellant and the Council are in contact about resolving these issues outside of the Appeal setting.
- 3.10 The Stable Block is also in a very poor condition, having been left without an active use for many years, with little or no investment in its maintenance. It is currently considered unsafe and inaccessible due to its poor condition, and it has been identified as a dangerous structure.

LW Developments has undertaken initial work to safeguard its structure from further deterioration, but it remains in need of repair and conversion to residential use. Where this is alleged to be in breach of listed building control the Appellant and the Council are in contact about resolving these issues outside of the Appeal setting.

- 3.11 The existing “lean-to” building on the Site was significantly damaged during storms in early 2022. Works to secure and preserve the building were undertaken for health and safety reasons. Where this is alleged to be in breach of listed building control the Appellant and the Council are in contact about resolving these issues outside of the Appeal setting.

### **Recent Planning History**

- 3.12 Details of the site’s planning history are set out within section 2 of the Planning, Design and Access Statement (CD1.3). Of particular relevance to this appeal are three previous applications, which have seen planning and listed building consent being granted for the residential conversion of Northaw House and the Stable Block, and new-build enabling development within the wider site, to provide funding for the repair and conversion of these buildings.
- 3.13 Applications S6/1999/1099/FP and S6/1999/1100/LB sought to convert the Stable Block into a house. It proposed the demolition of some single-storey elements of the building, and their replacement with a new extension and garage. In addition, a new Western Gate Lodge was to be constructed of a similar design, in the position where the foundations had already been laid (in accordance with a previous planning application from the 1970’s). When considering this application, Officers concluded that *“with regard to the conversion of the stable, a residential conversion is realistically the only option for restoring the building which has suffered from neglect”*. The stable block was not renovated at this time, but the consents remain extant, as they were implemented, with one of the two gate lodges having been constructed.
- 3.14 Planning and listed building applications S6/2004/0572/LB and S6/2004/0573/FP proposed the conversion of Northaw House and the Stable Block, each into a single dwelling, the Ballroom Wing into 3 dwellings, the extension and alteration of Oak Cottage, and 7 new-build dwellings within the wider site. These applications were submitted to the Council in April 2004, considered by the Planning Committee in November 2007 and approved, following the signing of a s106 agreement, in October 2009.
- 3.15 As noted above, planning and listed building consent has also been granted for proposals which are almost identical to the current application, other than the omission of the 2 new-build gate lodges and 4 East Drive houses (applications 6/2019/0217/MAJ and 6/2019/0218/LB). The new-build housing permitted in relation to these applications is under construction, with several houses nearing completion. The conditions attached to the original consents were amended via s73 Applications to allow the new build work to commence before all conditions in relation to the listed building elements were approved.

### **The Lawful Use of Northaw House**

- 3.16 The existing planning and listed building consents allow for Northaw House to be converted into residential apartments. However, that conversion has not yet taken place, and indeed it cannot yet lawfully take place, as the relevant pre-commencement conditions relating to the listed building consent, have not yet been discharged. As things stand, Northaw House has



not been altered, and the work which has taken place relates to another part of the application site. A change of use to residential apartments will not be affected until those conversion works are undertaken. At present, Northaw House retains its established office use, and that remains its lawful planning use. The Council records Northaw House and its associated buildings as offices for rating purposes.



*Character areas within the appeal site*

### **Character Areas**

- 3.17 The Planning, Design and Access Statement explains the appeal proposals in relation to different character areas within the site. Details of these areas, both as they are, and as the proposed development would relate to them, are set out within that document. The plan above, taken from Section 2 of the Planning, Design and Access Statement, shows their location within the site. Reference is made to these areas throughout this statement.

### **Accessibility**

- 3.18 The appeal site is currently served by a vehicular access from Judges Hill, on its western boundary. A further access is available on the site's eastern boundary, also onto Judges Hill, at the point of a mini roundabout and the entrance to the village. Details of the proposed access arrangements are set out in Section 5, and in the Transport Statement by KMC Transport Planning.
- 3.19 Northaw contains a range of facilities for local people, including a pre-school, primary school, village hall, church, pub and restaurant. As such, many local trips can be accommodated with facilities within walking distance of the village's population.

- 3.20 Northaw Church of England Primary School and Squiggles Pre-School are both within walking distance of the appeal site. There are several secondary schools in Potters Bar, all of which are accessible by car. Transport to Dame Alice Owen's Secondary School is provided on the 242 bus, with additional runs for school children during term time. As a consequence, future occupants of the site would have access to alternative means of transport, and would not have to be solely reliant on a car to access services.
- 3.21 The nearest towns are Cuffley and Potters Bar. Both are around 1.5 miles from Northaw, and are easily accessed via a short journey by car or bus. They each host a variety of schools, supermarkets, shops, service providers and recreational activities, as well as a variety of employment opportunities.
- 3.22 The nearest bus stops are within a 5-minute walk of the site, close to its western entrance, and in the village around 300m to the east of the site. The 242 bus travels from Waltham Cross to Potters Bar several times a day.
- 3.23 Potters Bar railway station has a direct line to London Kings Cross, which currently departs every 30 minutes, and takes a maximum of 19 minutes to complete the journey. The frequency of this service appears to have reduced, from every 10 to 15 minutes at the time the application was made, presumably due to the reduced demand for rail travel following the coronavirus pandemic. Cuffley Railway station also offers train links on the Great Northern Hertford Loop, running services to Finsbury Park, Moorgate, Hertford and Stevenage.

## 4 Relevant Policies and Guidance

### Welwyn Hatfield District Plan (2005)

4.1 The following saved policies are considered to be of relevance to the determination of this appeal (listed in Plan order):

- M4
- D2
- IM2
- H2
- RA2
- RA10

### National Planning Policy Framework (2021)

4.2 Paragraph 8 sets out the three aspects of sustainable development, which include economic, social and environmental objectives. The economic objective aims *“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”*. The social objective includes a requirement *“to support strong, vibrant and healthy communities, by ensuring a sufficient number and range of homes can be provided to meet the needs of present and future generations”*. The environmental objective includes a requirement to make *“effective use of land”*, and *“improving biodiversity”*. The NPPF does not require development to jointly and simultaneously achieve planning gain in each of the three considerations. It is sufficient for all three to be considered and for a balance between benefit and adverse effects to be achieved across those three areas.

4.3 Paragraph 11 sets out the presumption in favour of sustainable development. For decision taking this means:

- c) *“approving development proposals that accord with an up-to-date development plan without delay; or*
- d) *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 of this Framework taken as a whole.”*

- 4.4 Footnote 7 clarifies that the policies referred to in d(i) are only those in the NPPF, and not those in development plans. It also clarifies that these are policies relating to various matters, including Green Belt land, Local Green Space, Areas of Outstanding Natural Beauty, irreplaceable wildlife habitats, designated heritage assets and areas at risk of flooding.
- 4.5 Footnote 8 clarifies that relevant policies will be considered out of date where the local planning authority is unable to demonstrate a 5-year supply of deliverable housing sites, or where a Housing Delivery test is failed.
- 4.6 Paragraph 38 states that *“local planning authorities should approach decisions on proposed development in a positive and creative way”*; and that they *“should seek to approve applications for sustainable development where possible”*.
- 4.7 Paragraph 47 notes that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”*.
- 4.8 Paragraph 60 identifies the government’s objective of *“significantly boosting the supply of homes”*. In this context, paragraphs 68 and 74 require local planning authorities to identify a supply of *“specific deliverable sites”* for the immediate 5-year period, including a buffer brought forward from later in the plan period.
- 4.9 Paragraph 76 requires local planning authorities to monitor the delivery progress of sites with planning permission. It also introduces the Housing Delivery Test, and requires the preparation of an action plan where delivery falls below 95% of the required level. Footnote 8 also clarifies that where the Housing Delivery Test indicates that delivery has been below 75% of the level required over the previous three years, the presumption in favour of sustainable development will apply.
- 4.10 Paragraphs 147 and 148 relate to development which affects the Green Belt.
- 147 *“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”*
- 148 *“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”*
- 4.11 Paragraphs 149 and 150 set out forms of development which are not considered inappropriate within the Green Belt. These include the following:
- 149 c) *“the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
- 149 d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- 149 e) *limited infilling in villages;*

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

- o *not have a greater impact on the openness of the Green Belt than the existing development;*

150 d) *the re-use of buildings provided that the buildings are of permanent and substantial construction."*

4.12 Paragraph 189 notes that heritage assets are *"an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations"*. Paragraph 190 notes *"the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation"*; and it recognises *"the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring"*.

4.13 Paragraph 197 states that, when determining applications, local planning authorities should take account of:

- a) *"the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness."*

4.14 Paragraph 199 states that:

*"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."*

4.15 Paragraphs 200 to 204 concern substantial and less than substantial harm to heritage assets. Paragraph 201 concerns substantial harm. It is common ground that no substantial harm would be caused in this case; such harm is equated to the *"total loss of significance"* of a heritage asset. Paragraph 202 concerns less than substantial harm, and states:

*"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*

4.16 Paragraph 208 sets out national policy with regard to enabling development in relation to the conservation of heritage assets:

*“Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.”*

4.17 With regard to whether policies are to be considered up to date, paragraph 219 states that:

*“Due weight should be given to them, according to their degree of consistency within this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

#### **Planning (Listed Building and Conservation Areas) Act 1990**

4.18 The decision maker is required by sections 16(2) and 66(1) of the Act to have special regard to the desirability of preserving a listed building and its setting when exercising planning functions. The decision maker must give considerable importance and weight to the desirability of preserving the significance of the listed building, and there is a strong presumption against the grant of permission for development that would harm its heritage significance.

#### **Emerging Welwyn Hatfield Local Plan**

4.19 The present, proposed to be modified, draft Local Plan remains under examination. After 5 years of examination, it is still unclear whether the Local Plan will be found sound. At this stage, its policies can only be afforded limited weight.

# 5 General Matters Agreed

## Consented Development

- 5.1 All details relating to the development which already has consent (under applications 6/2019/0217/MAJ and 6/2019/0218/LB) are agreed as being acceptable. Current areas of disagreement relate exclusively to the additional new-build development proposed by this appeal (the 2 Gate Lodge houses and 4 East Drive houses).

## Social Sustainability

- 5.2 It is agreed that there is an acute shortfall in the supply of deliverable housing land, that is substantially less than 5 years. The shortfall is considerable and significant, and is not a position upon which there would be any marked improvement in the short to medium-term. It is agreed that very substantial weight should be accorded to the provision of market housing from this development, which would make a positive contribution to the supply of market housing in the Borough.
- 5.3 The results of the Government's Housing Delivery Test in the past four years have been as follows:

Year	Housing Required	Housing Delivered	% Requirement Delivered	Consequence
2018	1,701	1,493	88%	Action Plan
2019	2,034	1,448	71%	Buffer
2020	2,284	1,450	63%	Presumption
2021	2,244	1,488	66%	Presumption

*Housing Delivery Test Results for Welwyn Hatfield Borough*

- 5.4 It is agreed that the Council do not have a five year housing land supply and that it is not meeting the Governments Housing Delivery Test.
- 5.5 The proposed development would provide new homes, which would boost the supply of deliverable housing land within the Borough, and meet identified local needs. The proposed development could be completed within 5 years of the appeal being determined.
- 5.6 The proposed development would also provide highway safety benefits, due to both a reduction in traffic movements when compared with Northaw House's lawful office use, and improvements to the site's highway junctions.

## Economic Sustainability

- 5.7 The proposed development would provide economic benefits through the generation of construction employment, increased Council Tax receipts and New Homes Bonus to the Council, and the creation of additional demand for local services and facilities.

## Environmental Sustainability

- 5.8 The proposed development would provide environmental benefits, including the provision of suitable landscaping, and its future management and preservation, and the creation of new ecological habitats which would enhance biodiversity within the site.
- 3.24 Future occupants of the site would have access to alternative means of transport, and would not have to be solely reliant on a car to access services.
- 5.9 The site is within Flood Zone 1 on the Environment Agency's maps, indicating a low probability of flooding. The proposed development would not be at risk of flooding, and suitable arrangements would be put in place to deal with the discharge of surface water.

### **Policy Compliance**

- 5.10 There is no suggestion that the proposed development would fail to accord with the policies of the development plan, other than those policies which are referred to in the reasons for refusal.

### **Presumption in Favour of Sustainable Development**

- 5.11 Should it be concluded that the proposed development complied with national policy with regard to development within the Green Belt, and matters relating to designated heritage assets, then the presumption in favour of sustainable development would apply to the proposed development, on the basis of the current shortfall in the supply of deliverable housing land, and due to the Housing Delivery Test result being below 75%.



# 6 Financial Viability

## Parties and Representation

- 6.1 In respect of Viability, George Venning (BVA) acts for the Applicant and Parminder Dosanjh (AV) acts for the Council. In the previous applications, James Brown Acted for the Applicant and BNP Paribas for the Council. A timeline of previous viability discussions between the parties in relation to this Site is included at Annexe 1 to this Statement of Common Ground.

## Principles

- 6.2 It is agreed that the principle of enabling development is “development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset. However, paragraph 202 of the NPPF recognises that conflict with planning policies may be justified if the development proposed would secure the future conservation of the asset(s) and the wider benefits outweigh the disbenefits of not adhering to those policies.”
- 6.3 It is agreed that the level of enabling development permissible in any specific instance is the minimum amount necessary in order to secure the long-term future of the assets. The determination of the quantum of enabling development is governed by means of a viability appraisal.

## Relevant Guidance

- 6.4 There are five current documents that provide guidance on the conduct of such appraisals.
- GPA4 Enabling Development & Heritage Assets – (Historic England Jun. 2020) (“the GPA4 Guidance”);
  - Planning Practice Guidance (Viability);
  - Planning Practice Guidance (Historic Environment);
  - Assessing Viability in Planning under the NPPF 2019 for England – (RICS, Mar. 2021);
  - RICS Valuation – Global Standards (the ‘Red Book’) – RICS, January 2022.
- 6.5 It is agreed that these documents were not in their current form at the time the extant consents (6/2019/0217/MAJ and 6/2019/0218/LB) were granted in January 2020. It is agreed that the relevant documents at that time were:
- Enabling Development and the Conservation of Significant Places (English Heritage Oct. 1999);
  - Financial Viability in Planning 1st Edition (RICS Aug. 2012);
  - Planning Practice Guidance (as published).
- 6.6 It is agreed that, for the purposes of this appeal, the processes outlined in “Enabling Development & Heritage Assets” is substantially similar to that set out in “Enabling Development and the Conservation of Significant Places”.

- 6.7 However, it is agreed that the approach to land value set out in the two RICS documents changed very substantially. The 2012 guidance set out an approach to viability based upon the market value of development land. This approach had been discredited by the courts in 2018<sup>1</sup> and the PPG had been amended to reflect the current Existing Use Value+/Alternative Use Value approach. The 2021 RICS Guidance also reflects that approach.
- 6.8 The parties agree that the proper basis for the consideration of land value question in this appeal is the one set out in the current versions of the guidance as set out at paragraph 6.4 above.
- 6.9 For the avoidance of doubt, it is further agreed that the general approach to Land/Asset Value set out in the current guidance was applied in the determination of the extant permissions. In the extant consent (6/2019/0217/MAJ and 6/2019/0218/LB) the parties disagreed about what the Existing Use Value of the site was but not that EUV was the applicable principle.
- 6.10 The Appellant's case is that the Council's consultants erred in failing to reach an agreed position with the Appellant before determining the application. While the Council offered the Appellant the opportunity of a Red Book exercise to assess the current market value of the asset, the Council made it clear that even if it could be proved that the level of development was the minimum necessary it was the view of officers that this application would be refused in any event because of the level of harm that would result from the development.
- 6.11 Thus, the present applications seek to remedy the defects of the initial consent.
- 6.12 The Council's case is that whatever Existing Use Value may have existed at the time of the first application has been extinguished and must therefore be set aside.

#### **Application of the Guidance**

- 6.13 It is agreed that the framework for the assessment of Enabling Development is set out in a seven-step process at paragraph 29 of the GPA4 Guidance. In this process, Step 6 is to, "Produce a development appraisal that demonstrates the financial contribution the development will make to the conservation of the heritage asset;" but it is agreed that many of the other steps will feed into that appraisal.
- 6.14 Further guidance on Step 6 is set out at Paragraph 54 of the GPA4 Guidance(?):

*"In order to calculate the amount of enabling development that might be needed, it is good practice for two development appraisals to be carried out one after another. They will be produced by the applicant and it is advisable these be audited by an independent firm of chartered surveyors. The first appraisal is to establish whether there is a conservation deficit and if so, how much. The second is to demonstrate the minimum amount of enabling development needed to meet the identified deficit."*

- 6.15 It is agreed that the existence (or otherwise) of a Conservation Deficit is the critical concept in the determination of whether Enabling Development is justified (and, if so, how much may be justified). This concept is unique to Enabling Development and it does not appear in either the RICS guidance or the PPG. It is defined in the Glossary to GPA4 as:

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<sup>1</sup> Parkhurst Road vs Secretary of State for Communities and Local Govt (CO/3528/2017)

*“the amount by which the cost of repair (and conversion to optimum viable use if appropriate) of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs.”*

- 6.16 It is agreed that “all appropriate development costs” in this context will include an allowance for the acquisition of the Heritage Asset itself. This term in the appraisal is variously referred to in GPA4 as the “market value of the asset in its current state”<sup>2</sup> and Site Value<sup>3</sup>.

#### **Areas of Material Disagreement**

- 6.17 There are a number of areas of disagreement, not all of them will be resolved by this document. The parties are, however, in a position to agree that some areas of disagreement are determinative and others are not.
- 6.18 It is therefore agreed that the primary matter of substance about which the parties disagree is what allowance it is appropriate to make in respect of the market value of the heritage asset in its current state.
- 6.19 The Council argues that this can only be determined on the basis of the value arising from the extant consents and that the need for any further enabling development can only be determined by reference to that consent;
- 6.20 The Appellant argues that this approach is unreasonable because the extant consent was flawed, and the Council did not follow either the guidance in place at the time or the current guidance, in issuing it. Based on this, the Appellant argues that an allowance of £1.6m is justified, and that the use of the heritage asset as offices on which this value is based remains a viable use and is the current lawful planning use of the asset, and cannot be disregarded.
- 6.21 Although the parties do not agree on this matter, they *do* agree upon its significance. The Appellant’s viability expert agrees that, if the Council’s viability expert is correct in his approach to Land Value then the site value of the heritage asset and the land value of the extant 25 units scheme are one and the same thing and no further Enabling Development is required in the absence of a Benchmark Land Value. Conversely, the Council’s viability expert agrees that, if the Appellant’s viability expert’s approach to Land Value is appropriate then the level of enabling development proposed in the current application would be required.

#### **Areas of Non-Determinative Disagreement 1 – Format of Appraisals**

- 6.22 The Appellant argues that the critical concept of a Conservation Deficit implies a unique structure to the appraisals undertaken for the assessment of enabling development. In such appraisals the Land Value/Site Value is an *input* and the *output* is the Conservation Deficit. This structure was explicitly set out in the English Heritage guidance from 1999 and remains implicit in GPA4.
- 6.23 The Council agrees that this would normally be the case but argues that it is *not* appropriate in this instance.

#### **Areas of Non-Determinative Disagreement 2 – S106**

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<sup>2</sup> Paras 46 & 55

<sup>3</sup> Para 49

- 6.24 The Council's original Financial Viability Assessment included an allowance of £118,400 to cover the cost of S106 Contributions in respect of the Consented Scheme. It is agreed that this should, in fact have been £173,539 to take in to account indexation.
- 6.25 The Appellant's Appeal Statement included a projection for the level of contributions associated with the 31 unit scheme proposed - £221,796. The Council's Statement of Case states that this has been increased to £452,305.
- 6.26 It is agreed that such a large change to the level of contributions sought will have a material effect on viability. Both parties agree to include the appropriate level of contributions as legitimate development costs in the assessment of the Conservation Deficit and the level of enabling development required to offset it. However, it is also agreed that if the final figure is between the limits established by the parties previous submissions, it will not affect the conclusion as to how much enabling development is required at Northaw House.

### **Areas of Non-Determinative Disagreement 3 – Construction Costs**

- 6.27 There are a number of areas of disagreement as to the construction/refurbishment costs
- 6.28 The Appellant's view of construction costs was informed by a cost plan undertaken by Madlins and dated June 2018. These build costs were agreed between the Appellant and the Council as part of the original application. Subsequently, and for the purposes of this Appeal, the Council's position has changed and their view is now informed by a review of those costs by Concert – dated March 2021. It is agreed that the BCIS All-in Tender Price Index has risen considerably since the dates on which those reports were undertaken. It is agreed that there is a £662,402 discrepancy between the parties for the cost of conversion of the heritage asset to residential use, and a £829,426 discrepancy in the build cost for a 25 unit enabling scheme
- 6.29 Concert's review identified a number of issues with Madlins' costs some of which are accepted by the Appellant but others of which are not. The Appellant's viability evidence seeks to reconcile the costs in order to arrive at an agreed position.
- 6.30 The Council have rejected that approach suggesting that both parties either adopt Concert's revision in full or that the Appellant submits to what amounts to an open book review of the cost incurred to date.
- 6.31 The Appellant resists the open book approach on the grounds that accepting it would violate the principle that costs and values should be assessed at the same point in time. A review of costs would necessitate a review of values. If both values and costs are subject to review at this late stage, essentially nothing is agreed.
- 6.32 Whilst significant, the Appellant and the Council agree that the difference of opinion in respect of costs is not so significant as to affect the judgement as to the level of enabling development required to offset the identified Conservation Deficit.

### **Matters of Fact – Price Paid**

- 6.33 Both parties agree that para 49 of the guidance requires the disclosure of the price paid for the heritage asset under consideration.

- 6.34 The price paid, on 19th August 2020, was £6,530,898.
- 6.35 Both parties agree that this is irrelevant to the determination of the level of enabling development required. In the words of the PPG “Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.”
- 6.36 The Appellant has never sought to attach any significance to the purchase price. The Council agrees that it would not be appropriate to do so.

#### **Agreed Matters**

- 6.37 All the other inputs to the Financial Viability Appraisals undertaken by both parties are agreed. These include:
- The nature and extent of the development (measured areas);
  - The values associated with the completed homes;
  - The timescale of development;
  - The cost of finance (interest);
  - Acceptable allowances for professional fees;
  - Allowances for disposal costs (marketing agency and legal);
  - A suitable allowance for developer profit.

# 7 Green Belt

## **Green Belt Policy**

- 7.1 It is agreed that the appeal should be considered in light of the policy on Green Belt matters set out by the National Planning Policy Framework (NPPF), June 2021, that being the most up to date and relevant policy context.

## **Appropriate Development**

- 7.2 It is agreed that the new-build elements of the proposed development are not defined as appropriate development, and that they can only be justified by very special circumstances.

## **Very Special Circumstances**

### *Matters Agreed*

- 7.3 The previous applications (6/2019/0217/MAJ and 6/2019/0218/LB) were the same as the current proposals, other than the omission of the 2 Gate Lodge Buildings and the 4 East Drive houses. The Appellant and the Council agree that these proposals are compliant with Green Belt Policy. It is also agreed that very special circumstances were required to justify the provision of new-build enabling development in that case, and these related to the provision of funding for the repair and restoration of the listed buildings and curtilage listed structures, and their conversion to residential apartments.
- 7.4 It is also agreed that there would be economic benefits arising from the proposed development, in terms of construction employment, increased Council Tax receipts and New Homes Bonus to the Council, and the creation of additional demand for local services and facilities.

### *Matters Not Agreed*

- 7.5 The Appellant considers that other benefits relating to the proposed development should also be counted towards the totality of very special circumstances which justify the proposed development. These includes the following:
- The provision of market housing, to meet an identified and substantial shortfall in the current supply.
  - The need for further enabling development, to fund the required works to the heritage assets.
  - The need for further planning and listed building consents to achieve the Council's unfulfilled aim in the original application, to ensure the works to the heritage assets would be completed, in accordance with Historic England's guidance.

- Environmental benefits, including the provision of suitable landscaping, and its future management and preservation, and the creation of new ecological habitats which would enhance biodiversity within the site.
- Highway safety benefits due to both a reduction in traffic movements when compared with Northaw House's lawful office use, and improvements to the site's highway junctions.

7.6 It is also not agreed what weight should be accorded to the various benefits.

### **Openness**

7.7 It is agreed that, as the elements of the proposed development which already have consent are located in and around the existing buildings within the site, these would not have an unacceptable effect on the openness of the Green Belt due to its visibility within the local landscape.

7.8 It is not agreed what effect the additional new-build development, the East Drive houses and the Gate Lodges, would have on the openness of the Green Belt, due to visibility.

### **Purposes of Green Belt Land**

7.9 It is agreed that the proposed development would not conflict with the following purposes of Green Belt land:

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

7.10 However, it is not agreed whether the proposed development would conflict with the following purposes:

- c) to assist in safeguarding the countryside from encroachment;
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

# 8 Heritage

## Assets Affected

- 8.1 It is agreed that there are only two designated heritage assets capable of being affected by the appeal scheme, namely:
- Northaw House (grade II, UID: 1100970); and
  - Stable Block at Northaw House (grade II, UID: 1100971).
- 8.2 In addition to these assets, there are a number of buildings and structures which would be considered to form part of the listed building under section 1(5)(b) of the Planning (Listed Building and Conservation Area) Act 1990. These include outbuildings to the west of Northaw House and the Walled Garden.

## Statement of Significance

- 8.3 Having regards to the above assets, it is agreed that the significance of these assets can be summarised as below:

### *Northaw House*

- 8.4 Northaw House is a grade II listed building of considerable architectural and historic interest. This interest primarily derives from the building, despite alteration, being a fine example of a gentleman's residence in the context of a small Hertfordshire Estate. Historic interest is also derived from associations with Nyn Hall and the remnant physical associations, including the mutual landscaping of the parkland between the buildings and the elements of re-used fabric from Nyn Hall now contained within the estate (specifically within the Stable Block).
- 8.5 With regard to the building's exterior, resulting from its phased development Northaw House features alterations and extensions in various architectural styles, including Baroque, Classical and Queen Anne. It is the combination of these elements of architecture which give Northaw House a unique appearance and architectural interest.
- 8.6 The external form and appearance is also of value as a multiphase modestly scaled country house featuring the easily discernible phasing and character of the building with its main core and subservient flanking elements. The flanking elements are typically later in date and have undergone much change both externally and internally. While still of some value in terms of architectural and historic interest these parts of the building are less sensitive to change and of lower inherent significance than the core 17th and 18th century parts of the building.
- 8.7 Architectural and historic interest is also derived from the survival of historic internal elements within the building. It appears that a large portion of the original decorative surface finishes and fittings have been stripped from the building during its various uses and alteration in the 20th century. However, a number of internal fixtures survive which are of architectural and historic value and include the vaulted ceiling and floor of the entrance hall,



main staircase (19th century replica) and service staircase (17th century), basement slab flooring, a number of historic fire surrounds and surviving decorative plasterwork and joinery. The mid to late 19th century conservatory is of some significance in its own right as a good quality surviving timber and cast iron conservatory of the period.

- 8.8 Elements of the building's plan form also contribute to its architectural and historic interest with the plan form within the 17th century elements of the building primarily unaltered. Within the 17th and 18th century portions of the building the plans form contributes to the special architectural and historic interest insofar as providing physical illustrative evidence for how the building was originally used.
- 8.9 The building is also of archaeological value as a multi-phase site with standing material from a wide variety of periods and internal features which have been retained. The artistic values of Northaw House are moderate and primarily relate to the aesthetic qualities of the building's facades and its interiors, covered in this report as architectural value.
- 8.10 The setting of Northaw House contributes to the ability to appreciate the interest of the grade II listed building. Specific features which contribute towards this include:
- The close relationship the front (north) elevation has with the sweep of parkland that was enclosed in the late 18th century by the highway diversion called Judge's Hill (designed to give privacy to the estate) alongside longer views to open countryside and experiential links to Nyn Hall;
  - The direct relationship the south (rear) elevation has with the parkland and open countryside that was historically associated with the building, and which extended as far as Springfield Farm;
  - The relationship between house and stable block, on the west and south west sides, the outbuildings to the west and the walled garden (which is of some value in its own right)

#### *Stable Block*

- 8.11 The Stable Block dates to c.1775 and is currently in a poor state of repair (it has been identified as a dangerous structure given its partial ruinous condition) meaning that only part of the interior can be inspected at present. The stables are a fine example of their type and date, potentially incorporating earlier fabric, and contribute to the quality and appearance of the estate as a whole. They are of architectural and historic interest due to their classical form and appearance, surviving historic fabric (which includes a number of stable fittings including divides, panelling, iron railings and hay racks) and illustrative value as a well surviving and relatively unaltered stables dating from the last quarter of the 18th century.
- 8.12 As with Northaw House the setting of the Stable Block contributes towards an ability to appreciate its significance. Key factors include the close formal relationship with the house and other ancillary structures (including the walled garden) and the direct relationship the Stable Block has with both the main access drive and surrounding parkland/countryside.

### **Effect on These Assets**

- 8.13 Having regards to these assets, it is agreed that the appeal scheme would, as a whole, cause less than substantial harm to the significance of both Northaw House (grade II) and the Stable Block (grade II).
- 8.14 It is also agreed that less than substantial harm to these assets can in principle be outweighed by the public and heritage benefits of an enabling development scheme. The principle of this was agreed as part of the 2019 enabling development scheme (6/2019/0217/MAJ and 6/2019/0218/LB) where less than substantial harm to the assets was also identified.
- 8.15 It is also agreed that a number of elements of the current appeal scheme are acceptable in principle with regards to impact on heritage assets given that they have already been consented as part of the 2019 enabling development scheme. These elements include:
- Residential conversion of Northaw House to provide 8 residential units;
  - Residential conversion of the Edwardian Wing to provide 3 residential units;
  - Residential conversion of the Ballroom Wing to provide 2 semi-detached houses;
  - Residential conversion of the Stable Block (Coach House) into 1 residential unit;
  - Refurbishment of Oak Cottage to form 1 residential unit;
  - Construction of new build enabling development comprising:
    - 3 detached houses within the Walled Garden;
    - 7 new build dwellings within the 'settlement area'.
  - Landscaping works including the restoration of the orchard.

### **Gate Lodges and East Drive Housing**

- 8.16 The principle of the 2 Gate Lodges and the appropriateness of the design and appearance of these buildings is agreed, but their siting and domestic curtilage is not.
- 8.17 The design and appearance of the 4 workers cottages on the East Drive is agreed.

## 9 Planning Obligations

8.18 The applicant and the Council agree that it is necessary for a legal agreement or undertaking to be provided to accompany the appeal, to address the following matters:

- The following financial contributions, requested by Hertfordshire County Council (with the stated sums to be index linked in accordance with Hertfordshire County Council's Planning Obligations Toolkit):
  - £21,851 nursery education;
  - £183,330 towards primary education;
  - £202,221 towards secondary education;
  - £25,846 towards children with special educational needs and disabilities;
  - £2,953 towards library facilities;
  - £2,953 towards youth facilities; and
  - £7,471 towards waste management;
  - The provision of fire hydrants within the development
  - £680 monitoring fee.
- £2,840 towards the provision of refuse and recycling bins, to be provided by Welwyn Hatfield Borough Council.
- £5,000 monitoring fee, to be paid to Welwyn Hatfield Borough Council.
- A requirement that the proposed development would complete the repair, refurbishment and residential conversion of Northaw House, the Stable Block, Ballroom Wing and Orchard Cottage, and the repair and refurbishment of other curtilage listed structures including the walled garden.

8.19 It is agreed that there is no justification for providing affordable housing in this instance, as this would be contrary to the principle of enabling development, and it would also render the proposed development financially unviable.

8.20 The Appellant and the Council will work together to address this issue as quickly as possible.

# 10 Planning Conditions

- 10.1 The appellant and the Council agree that the list of conditions set out in relation to the previous planning and listed building consents (6/2019/0217/MAJ and 6/2019/0218/LB), as amended by non-material amendments, should form the basis of any conditions which are to be imposed in relation to this appeal.

# A1 Viability Discussions Timeline

# A2 Appeal Core Documents