

**WELWYN HATFIELD BOROUGH COUNCIL  
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

**DELEGATED APPLICATION**

**Application No:** 6/2019/1370/MAJ  
**Location:** Land to the east of Firs Wood Close, Northaw  
**Proposal:** Erection of 26 dwellings and associated access  
**Officer:** Mr William Myers

**Recommendation:** Refused

6/2019/1370/MAJ

<b>Context</b>	
<b>Site and Application description</b>	<p>The application site comprises an undeveloped area of scrubland and trees adjoining the south east side of Firs Wood Close which is accessed from Coopers Lane Road. The site does not contain any buildings or structures. The site is understood to have previously formed part of a far larger site known as Hook Kennels which was comprehensively redeveloped for a change of use from a racing association headquarters to residential use following permission granted by application S6/1987/0171/FP. The re-developed area lies to the north east of the site and comprises 38 dwellings. Included within the 1987 permission were four large detached properties of individual design which front onto Firs Wood Close. East of the site is the Oshwal community and religious centre used by the Jain Community and set in some 32 hectares. To the west of the site there is a ribbon of houses located to the west of Hook Lane. The wider character of the area is rural and features arable fields, pasture fields and woodland.</p> <p>The proposal seeks to erection 26 affordable dwellings on land which is currently open and undeveloped. It is proposed that the dwellings would use the existing access which serves Hook Lane and Firs Wood Close.</p>
<b>Constraints (as defined within WHDP 2005)</b>	<p>GB - Greenbelt - Distance: 0            LCA - Landscape Character Area (Northaw Common Parkland) - Distance: 0            PAR - PARISH (NORTHAW AND CUFFLEY) - Distance: 0            Wards - Northaw &amp; Cuffley - Distance: 0            A4D - ARTICLE 4 DIRECTION - Distance: 0            FM00 - Flood Zone Surface Water 1000mm (18098) - Distance: 0            FM00 - Flood Zone Surface Water 1000mm (7641839) - Distance: 0            FM00 - Flood Zone Surface Water 1000mm (7641683) - Distance: 0            WILD - Hook Lane - Distance: 0            HEN - Existing habitat not currently qualifying under S41 NERC Act - Distance: 0            HEN - Existing S41 NERC Act habitat - Distance: 0            HEN - No known habitats present (high priority for habitat creation) - Distance: 0            SAGB - Sand and Gravel Belt - Distance: 0            HPGU - The Hook - Distance: 0</p>

<b>Relevant planning history</b>	<p>Application Number: S6/1987/0171/FP  Decision: Approval Subject to s106  Decision Date: 31 October 1987  Proposal: Change of use of existing racing association headquarters to residential comprising conversion and extensions to form 38 dwellings with associated car parking and access, and erection of one detached house with garage at Hook Kennels, Northaw, Herts.</p> <p>Application Number: S6/1988/0780/FP  Decision: Granted  Decision Date: 23 September 1988  Proposal: Installation of new septic tank</p> <p>Application Number: S6/1988/0855/FP  Decision: Granted  Decision Date: 21 October 1988  Proposal: Rebuilding of four residential units</p>		
<b>Consultations</b>			
<b>Neighbour representations</b>	Support: 0	Object: 82	Other: 0
<b>Publicity</b>	<p>Site Notice Display Date: 2 July 2019  Site Notice Expiry Date: 23 July 2019  Press Advert Display Date: 10 July 2019  Press Advert Expiry Date: 24 July 2019</p>		
<b>Summary of neighbour responses</b>	<p>A total of eighty two objections have been received from neighbours, these objections are summarised below.</p> <ul style="list-style-type: none"> <li>• The site is in an isolated location where there is no public transport, access to shops, schools or other amenities</li> <li>• There are no footpaths linking the site to other settlements</li> <li>• The development would be heavily dependent on private vehicles</li> <li>• The local road infrastructure could not cope with the increase in vehicle movements generated by the proposal</li> <li>• Sewage system in the area could not cope with the increase in demand generated by the proposal</li> <li>• The development would have an unacceptable impact on ecological interests within the immediate area</li> <li>• The development would represent inappropriate development within the Green Belt and no very special circumstances exist to outweigh this harm</li> <li>• The access to the site is inappropriate</li> <li>• Development is likely to harm the private road which is maintained by residents of Firs Wood Close</li> <li>• The development would result in an increase in pollution</li> </ul>		
<b>Consultees and responses</b>	<p>Lead Local Flood Authority – Objection  HCC Transport Strategy – Objection  Northaw &amp; Cuffley Parish Council – Major objection  The Gardens Trust – Objection  Campaign to Protect Rural England – Objection  Herts &amp; Middlesex Wildlife Trust – Objection  The Gardens Trust – Objection</p>		

	<p>Hertfordshire Ecology – No objection, subject to submission of S106 agreement and appropriate pre-commencement conditions</p> <p>HCC Growth Team – No objection, subject to appropriate contributions being structure by a S106 agreement</p> <p>HCC Fire &amp; Result – No objection, subject to condition</p> <p>WHBC Client Services – No objection, subject to condition</p> <p>WHBC Public Health and Protection – No objection, subject to condition</p> <p>HCC Historic Environment Advisor – No objection, subject to condition</p> <p>Hertfordshire Constabulary – No objection</p> <p>Thames Water, Development Control – No objection</p> <p>WHBC Parking Services – No objection</p> <p>HCC Minerals and Waste – No objection</p> <p>Environment Agency – No comment</p> <p>Affinity Water Ltd – No comment</p> <p>Cadent Gas Limited – No comment</p> <p>WHBC Affordable Housing – No comment</p>
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**Relevant Policies**

NPPF  
 D1    D2    GBSP1    GBSP2    M14  
 Supplementary Design Guidance    Supplementary Parking Guidance    Interim Policy for car parking and garage sizes  
Others: SD1, R1, R2, R5, R7, R11, R17, R20, R29, RA10RA14, , H2, D5, D8, IM2, M4, and H7

Emerging Local Plan Proposed Submission August 2016 (Key Policies):

SP1 (Delivering Sustainable Development)  
SP3 (Settlement Strategy and Green Belt)  
SP4 (Travel and Transport)  
SP9 (Place Making and High Quality Design)  
SP7 (Type an Mix of Housing)  
SADM1 (Windfall Development)  
SADM2 (Highway Network and Safety)  
SADM11 (Amenity and Layout)  
SADM12 (Parking, Servicing and Refuse)  
SADM14 (Flood Risk and Surface Water Management)  
SADM16 (Ecology and Landscape)  
SADM34 (Green Belt Development)

**Main Issues**

**Principle of the Development**

District Plan Policy SD1 states that development will be permitted where it can be demonstrated that the principles of sustainable development are satisfied and that they will accord with the objectives and policies of the District Plan; Policy R1 states that in order to make the best use of land in the district, the Council will require development to take place on land which has been previously used or developed; Policy GBSP2 directs new development into the existing towns and specified settlements within the district, providing that it will be limited to that which is compatible with the maintenance and enhancement of their character and the maintenance of their Green Belt boundaries. These objectives are consistent with the National Planning Policy Framework (NPPF). In addition, a key objective NPPF is a presumption in favour of sustainable development.

The site has not been allocated in the District Plan for additional

housing supply and as such would come forward as a windfall residential site of which Policy H2 would apply. This policy states that all applications for windfall residential development will be assessed for potential and suitability against the following criteria:

- I. The availability of previously-developed sites and/or buildings;*
- II. The location and accessibility of the site to services and facilities by transport modes other than the car;*
- III. The capacity of existing and potential infrastructure to absorb further development;*
- IV. The ability to build new communities to support infrastructure and provide demand for services and facilities*
- V. The physical and environmental constraints on development of land*

The provisions of Policy SADM1 of the Council's Emerging Local Plan are also relevant. This Policy states that planning permission for residential development on unallocated sites will be granted provided that:

- I. The site is previously developed, or is a small infill site within a town or excluded village. In the Green Belt, Policy SADM34 will apply;*
- II. The development will be accessible to a range of services and facilities by transport modes other than the car;*
- III. There will be sufficient infrastructure capacity, either existing or proposed, to support the proposed level of development;*
- IV. Proposals would not undermine the delivery of allocated sites or the overall strategy of the Plan; and*
- V. Proposals would not result in disproportionate growth taking into account the position of a settlement with the settlement hierarchy.*

The site is located approximately 2.5km from the shops and services within the settlement of Potters Bar, with the result that it is a considerable distance from existing services, facilities and public transport provision, with none of these being within a reasonable walking distance. There are no footpaths on either side of Coopers Lane Road for a considerable distance and the site is poorly connected to alternative modes of transport due to its rural location. Although it is noted that the applicant believes the services within Northaw could be accessed by a bridleway it is important to note that Northaw does not have any shops, with its services currently being limited to two pubs, a church, a primary school and a village hall, with the result that the occupants of the new dwellings would be unable to obtain basic services from Northaw. In addition, even if there were a wider range of services available in Northaw it is considered that it would be unreasonable to assume that occupants would use an unlit bridleway particularly in the colder, wetter and darker months of the year. As a consequence it is considered that future occupants would have to be heavily reliant on the car. Additionally the site comprises of open and undeveloped land and given the site's location in Green Belt, this is a

	<p>constraint on development of this site. Therefore whilst there are no objections to the remaining criteria of Policy H2, namely (i), (iii) and (iv) the proposal fails to comply with Policy H2. Additionally the proposal would also fail to comply with criteria (i) and (ii) of Policy SADM1.</p> <p>As discussed above, there is clearly a current and emerging strategy that seeks to channel development towards larger urban areas, which are more sustainable, away from more rural locations. To allow this kind of residential development in the Green Belt would, therefore, encourage an unsustainable pattern of development in a Green Belt location that is contrary to this aim. This undermines the Council's strategic objectives as to where it wants to locate development.</p> <p>Taking the above into account, the development would encourage an unsustainable pattern of development within the Green Belt, is isolated in terms of access to local shops, and facilities, and public transport services. As such, the development is not environmentally sustainable and is contrary to Policy SD1 and the NPPF.</p>
<p><b>Green Belt</b></p>	<p>The site is located within the Metropolitan Green Belt as defined by Local Plan Policy GBSP1. 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. The NPPF states, in paragraph 143 that, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 then states that substantial weight should be given to any harm in the Green Belt and that "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. Policy SADM34 of the Council's Emerging Local Plan, which echoes Green Belt policy in the NPPF, is also applicable.</p> <p>The main issues to consider in terms of Green Belt policy, therefore, are the appropriateness of the development; effect on the purpose of including land in the Green Belt; effect on the openness of the Green Belt and the impact on the visual amenity of the Green Belt; if it is inappropriate development are there any very special circumstances to justify its approval.</p> <p><i>Appropriateness</i></p> <p>Paragraph 145 of the NPPF states that a Local Planning Authority should regard the construction of new buildings as inappropriate in the Green Belt. It is noted that the applicant believes that the proposed development falls within the exception (f) of paragraph 145 because the proposal would deliver affordable housing. As the scheme is for 26 affordable dwellings it is not considered to be "limited" in scale. Furthermore, the delivery of affordable housing under this exception only applies "under policies set out in the development plan". The relevant policies in this case are Policy RA14 of the District Plan and Policy SP7 of the Emerging Local Plan. It should be noted that neither of these policies support the use of this site for affordable housing delivery because it is not small scale (SP7 applies to no more than 4 dwellings) and it is not located within, or adjoining to, a specific</p>

settlement or village. In addition, further to the above discussion about the unsustainable location, it is not considered that this site would be acceptable for the delivery of any housing.

Further to the above, although the applicant has stated within their planning statement that there is a borough wide affordable housing need, they have not provided robust analysis which demonstrates how this borough wide need translates into a local need which is specific to the application site. It is judged that a local community need as required by Paragraph 145(f) of the NPPF is more constrained than the need across the local authority area as a whole. It is very possible that housing needs may vary across the local authority area. It is judged that insufficient evidence has been provided to satisfactorily demonstrate that the proposal would meet an identified community need. As it is requirement of Policy RA14 of the District Plan, Policy SP7 of the Emerging Local Plan and the NPPF that such robust evidence is provided within applications of this nature it is judged that the applicant has also failed to satisfy this requirement within these policies.

Further to the above, it is noted that the applicant believes that the site is previously developed. For reference it is important to note how previously developed land is defined within the NPPF.

*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed the whole curtilage should be developed) 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 that was previously developed but where the remains of the permanent structure or fixed surface have blended into the landscape. (Annex 2, p.70)*

As a consequence of the above it is essential that an assessment is made as to whether the proposed development falls within the requirements and limitations set out above. The applicant has provided no plans to demonstrate that the application site was previously occupied by permanent buildings/structures or fixed surface infrastructure. Although historically the site may have had a link to the former kennels which existed to north east of the site, the applicant has not proved that the application site was within the curtilage of the kennels. In addition, it is important to note that this use ceased over 30 years ago. Furthermore, if there was once any buildings/structures or fixed surface infrastructure they are no longer present within the site today with the result that the site appears to be undeveloped land. As a result, it is judged that the application site cannot be defined as being previously developed.

As a consequence of the above, it is judged that the proposed development does not fall within exception (f) of paragraph 145 or any other of the exceptions listed within this paragraph and, as such, the proposal represents inappropriate development. With regards to

paragraph 146 of the NPPF it is not considered that the proposed development falls within any of the exceptions listed within this paragraph.

As the proposed development does not fall within any of the exceptions listed within paragraphs 145 or 146, it is considered that the proposed development is by definition inappropriate and that substantial weight should be attached to this harm. In addition, it is necessary to assess whether the proposed development preserves the openness of the Green Belt and the purposes of including land with the Green Belt. As a consequence, paragraphs 133 and 134 of the NPPF need to be considered.

*Openness and visual amenity*

As the proposed development does not fall within any of the exceptions listed within paragraphs 145 or 146, it is considered that the proposed development is by definition inappropriate and that substantial weight should be attached to this harm. In addition, it is necessary to assess whether the proposed development preserves the openness of the Green Belt and the purposes of including land with the Green Belt. As a consequence, paragraphs 133 and 134 of the NPPF need to be considered.

Paragraph 133 outlines that:

*The Government attaches great importance to Green Belts. 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.*

There is no definition of openness in the NPPF, but in the Green Belt context, it is generally held to refer to freedom from, or the absence of development.

It is considered that the proposed built form would have a significant impact on the openness of the Green Belt because the site is currently open and undeveloped. This would therefore impinge on the openness of the Green Belt and would also result in encroachment of built development into the Green Belt.

Whilst the physical presence of any above ground development would, to some extent, diminish the openness of the Green Belt regardless of whether or not it can be seen, openness also goes beyond physical presence and has a visual aspect. In the visual sense, openness is a qualitative judgement.

Indeed, in line with *Turner v Secretary of State and East Dorset Council* [2016] judgement the concept of openness should not be limited to a volumetric approach comparing the size, mass and physical effect of openness before and after development. Such an approach would be far too simplistic and ignore the wider aspects of openness which goes beyond the physical effect of buildings or structures. Factors relevant include how built up the Green Belt is now and how built up would it be after development has taken place.

In Samuel Smith Old Brewery (Tadcaster) Oxtan Farm v North Yorkshire County Council & Anor [2018] the visual impact of the scheme was considered as important as its “spatial” effects. Paragraph 38 of the judgement affirms that to exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic. A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as the spatial effects.

It is important to note that this approach is supported within National Planning Practice Guidance (NPPG) through the amendments which were made to this document in July of 2019.

The proposed residential use of the site would contrast with the site’s existing open and undeveloped character and appearance, resulting in a more intrusive form of development.

Dwellings are not, as a matter of general principle, normally regarded as contributing positively to the visual amenity of the countryside. It is considered that the addition of further enclosing boundary treatments and ancillary domestic structures, patio areas, residential-style landscaping, play equipment, washing lines and a range of other domestic paraphernalia would be probable in the event that planning permission were granted for a residential use. All of these, as well as additional vehicles parked on the site, would be incongruous additions to the character of the site and would not in keeping with the rural landscape.

With regards to the visual amenity of the Green Belt, the NPPF at paragraph 141 seeks to retain and enhance landscapes, visual amenity and biodiversity. Policies D1 and D2 of the District Plan aim to ensure a high quality of design and that development respects and relates to the character and context of the locality. In addition to the above, the NPPF sets out the view of the Government in respect of good design, indeed this is noted as forming a key aspect of sustainable development as it can contribute positively to making places better for people. In particular paragraph 130 outlines that ‘*permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions*’.

The site is within the Northaw Common Parkland Landscape Character Area. The Northaw Common Parkland Landscape Area is characterised by parkland features, with landscapes that have been created through the historic development of these parklands and estates. The area is predominantly rural in character with formal parkland and estate entrances being the norm. The recommended strategy for the area includes ensuring that historic hedged field boundary patterns are retained and that any new planting improves the character of the area.

Policy RA10 for development within Landscape Character Areas states that:

*Proposals for development in the rural areas will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character of the area*



*in which they are located, as defined in Welwyn Hatfield Landscape Character Assessment.*

As the site is open and undeveloped, it contributes to the setting and open character of the immediate area which is rural in character. Notwithstanding that established planting which would screen the proposed development from some vantage points, the sheer scale and spread of development represents a substantial intrusion of built form and physical permanence over a wide area of previously undeveloped land.

The proposals do not demonstrate that the landscape character of the area would be conserved, maintained or enhanced as required by Policy RA10 Landscape Regions and Character Areas. In landscape and visual terms the development proposals would introduce significant new built form and associated infrastructure into the rural landscape which would not conserve, maintain or enhance the local character of the area. It is therefore considered that the development would be unsympathetic to the character of the area and this impact would be accentuated at night time when the lighting within the proposed dwellings would spill out into the wider area. Accordingly the proposals do not comply with Policy RA10. For the same reasons the proposal would fail to comply with saved Policy D2 which seeks, as a minimum to maintain, and where possible, enhance the character of the area.

The proposed development would have a layout which would be more akin to a suburban form of residential development. As a consequence the proposed dwellings have a layout which would be more appropriate in an urban area rather than a rural area. This layout would be contrary to the characteristics of the locality and would erode the open and spacious character of the area. The development would therefore appear out of character with its immediate surroundings. As a consequence, this layout would introduce a form of development that would have urban dimensions and forms, and is unsuitable for this established area and the wider landscape character area.

The appearance and scale of the proposed dwellings would not unduly impact on the overall character of the area to an extent to warrant a reason for refusal. Materials could be conditioned in the event of an approval.

Overall, the proposed number and layout of dwellings fails to improve the character and quality of the area and the way it functions because they would not adequately respect and relate to the overall character of the established area. Accordingly objections are raised with regard to Policies D1, D2 and RA10 of the District Plan, the SDG and the NPPF.

As a consequence of the above, it is judged that the erection of 26 dwellings on land which is currently open and undeveloped Green Belt land would have a significant impact of the openness and visual amenity of the Green Belt. It is judged that substantial weight should be attached to this harm.

	<p><i>Purposes of including land in the Green Belt</i></p> <p>It is necessary to consider whether the proposal would result in greater harm to the five purposes of including land in the Green Belt when compared to the existing development. Paragraph 134 of the NPPF states that the Green Belt serves five purposes:</p> <ul style="list-style-type: none"> <li><i>a) to check the unrestricted sprawl of large built-up areas;</i></li> <li><i>b) to prevent neighbouring towns merging into one another;</i></li> <li><i>c) to assist in safeguarding the countryside from encroachment;</i></li> <li><i>d) to preserve the setting and special character of historic towns;</i></li> <li><i>and</i></li> <li><i>e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.</i></li> </ul> <p>The development would not, by virtue of its scale and location, lead to the sprawl of a large built up area, result in neighbouring towns merging into one another or fail to preserve the setting and special character of historic towns. The development by virtue of its residential design, appearance and layout would introduce an urban form of development into the countryside. This urbanisation of the application site would fail to safeguard the countryside from encroachment, contrary to paragraph 134(c) of the NPPF. In addition, both existing and emerging policy seeks to channel development towards larger urban areas away from more rural locations to assist in urban regeneration. To allow this kind of residential development in the Green Belt would encourage a pattern of development in a Green Belt location that is contrary to this aim. Taking this into account, the development fails to assist in urban regeneration by encouraging the recycling of derelict and other urban land. This is contrary to bullet point (e) within paragraph 134.</p> <p>It is concluded that the proposal would result in substantial harm to the openness and visual amenity of the Green Belt, while also failing to serve the purposes of including land within the Green Belt. The substantial harm is in addition to the substantial harm resulting from the development being inappropriate within the Green Belt for the reasons identified above.</p>
<p><b>Impact on neighbours</b></p>	<p>With regard to neighbour amenity, this is considered in two parts, firstly the impact on adjoining occupiers and secondly the impact of the scheme on future occupiers of the proposed dwellings.</p> <p>The proposed development, by virtue of its layout, is not considered to impact unduly on light or be overbearing to existing adjoining properties. With regard to privacy, windows positions are such that there would be no undue loss of privacy.</p> <p>With regard to the impact of the scheme on future occupiers of the proposed dwellings, a reasonable relationship would be able to be provided.</p> <p>Further to the above it is judged that the proposed development would result in a reasonable level of amenity for both existing and future occupants in line with Policies D1 and R19 of the District Plan.</p>

<p><b>Access, car parking and highway considerations</b></p>	<p>The proposal seeks permission for the erection of twenty six dwellinghouse, with the proposed provision of fifty spaces. The proposed access to the site would use an existing access from Coopers Lane Road.</p> <p>Paragraph 105 of the NPPF states that if setting local parking standards authorities should take into account the accessibility of the development; the type, mix and use of the development; the availability of and opportunities for public transport; local car ownership levels; and the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles. Paragraph 109 states that <i>“development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”</i> Policy M14 of the District Plan and the Parking Standards SPG use maximum standards which are not consistent with the NPPF and are therefore afforded less weight. As a consequence of the requirements within the NPPF, the Council have produced an Interim Policy for Car Parking Standards that states that parking provision will be assessed on a case by case basis and the existing maximum parking standards within the SPG should be taken as guidance only.</p> <p>A total provision of fifty spaces would be provide which is in accordance with the Council’s Car Parking Standards. Subject to an appropriate condition being imposed on any approval, which would require that this parking is laid out and allocated to residents of the dwellings, it is considered that this aspect of the development is acceptable.</p> <p>A transport assessment was submitted as part of this application. The Highways Authority have been consulted as part of this application. The full details of the highways considerations and conclusions are presented within their consultation response but in summary their response states that they object to the proposed development because it fails to promote opportunities to travel by non-car based modes of travel and it fails to provide safe, and suitable access for all users.</p> <p>As a consequence of these comments it judged that the proposed development fails to accord with Policy D5 of the District Plan 2005, Policies SP4 and SADM3 of the Emerging Local Plan 2016 and the NPPF.</p>
<p><b>Landscaping Issues</b></p>	<p>Local Plan Policy R17 seeks to protect existing trees whilst D8 requires landscaping to form an integral part of the overall design, and in this respect the high quality design required by Policy D1 and D2 would again be relevant. Landscaping is important in order to protect and enhance the existing character of the area and to reduce the visual and environmental impacts of the development.</p> <p>It is noted that some details have been provided as part of this application about the location and areas that would be used for hard and soft landscaping. It is considered that the information provided is sufficient to assess that the location and size of the proposed soft and hard landscaping would not be unacceptable but further information is required to make sure that the materials and planting used within these landscaping features are acceptable. As a consequence, it is</p>

	<p>considered that it would be reasonable and appropriate to impose conditions on any approval requiring that a detailed landscaping plan and Arboricultural Impact Assessment, and an Arboricultural Method Statement be submitted and approved by the Council. In addition, it is considered reasonable and appropriate to attach a planning condition, on any approval, requiring a Tree Protection Plan be submitted and approved by the Local Planning Authority prior to the commencement of development.</p>
<p><b>Ecology</b></p>	<p>The NPPF states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and delivering net gains in bio diversity where possible. One of the principles of the NPPF is that opportunities to incorporate biodiversity in and around developments should be encouraged.</p> <p>Policy R11 seeks to conserve the biodiversity of the borough and seek opportunities for enhancement to ensure no net loss of bio diversity. Policy R14 refers to areas of nature conservation interest and the need to ensure that a loss of wildlife habitats and other features of nature conservation interest are not permitted.</p> <p>The applicant has undertaken a recent ecological appraisal of the application site, and its surroundings, and this survey was been submitted as part of this application.</p> <p>Hertfordshire Ecology have been consulted as part of this application and they have assessed the submitted appraisal. In summary their response was that the proposed development could be acceptable principle, subject to imposition of appropriately worded pre-commencement conditions on any approval and an appropriate S106 Agreement being agreed.</p> <p>They advised that if appropriate habitat compensation and/or enhancement were not secured then the application should be refused given the impact it would have on the local ecology and failure of the development to deliver any clear proposals for net gain as would be expected for a site of this nature.</p> <p>Although it may be possible to impose appropriately worded conditions to this application were it to be recommended for approval, as no S106 has been submitted as part of this application which addresses the points raised by above it is considered that in accordance with the advice received the current proposal is unacceptable in ecological terms.</p> <p>Accordingly the proposed development is contrary to Policy R11 of the District Plan, Policy SADM16 of the emerging Local Plan, 2016 and the NPPF.</p>
<p><b>Other Material considerations</b></p>	
<p><b>Contaminated Land</b></p>	<p>Policy R2 states that the Council will encourage development on land that may be contaminated. However, on such sites applications must be accompanied by a full survey of the level of contamination and proposals for remediation of the site.</p>

	<p>As part of this application a ground contamination report was submitted and this has been considered by the Council Public Health and Protection Team. Their conclusion from this assessment was that the report demonstrates that contamination is not an issue for this site.</p>
<b>Archaeology</b>	<p>Policy R29 states that the Council will require developers to undertake an archaeological assessment where the proposed development may affect remains of archaeological significance, or may be sited in an area of archaeological potential.</p> <p>The consultation response from the Historic Environment Advisor indicates that due to the heritage of the land within the immediate vicinity of the site there is a reasonable likelihood that there could be historic works on the application site which may be disturbed as part of the proposed development. As a result of this, it would be reasonable and appropriate to impose a condition on any approval which would require an appropriate archaeological assessment of the site prior to commence, which would inform what further works are necessary.</p> <p>Accordingly, subject to the imposition of the above mentioned condition, the proposal would not be contrary to policy R29.</p>
<b>Waste Management</b>	<p>The Council's Client Services Team have been consulted as part of this application and raised no objection to the principal of the proposed development but they have requested that appropriate monies for refuse and recycling provision on the site are provided as part of any approval. It is considered that if this application were approved that these monies could be secured through an appropriate obligation.</p>
<b>Drainage and Flooding</b>	<p>The Lead Local Flood Authority have objected to the proposed development due to the lack of a satisfactory surface water drainage assessment being submitted. A surface water drainage assessment is vital to ensure that there are no flood risks resulting from the proposed development.</p> <p>Accordingly the proposed development is contrary to Policy R7 of the District Plan 2005, Policy SADM14 of the Council's Emerging Local Plan 2016 and the NPPF.</p>
<b>Planning Obligations</b>	<p>The NPPF sets out that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended):</p> <ul style="list-style-type: none"> <li>• <i>Necessary to make the development acceptable in planning terms</i></li> <li>• <i>Directly related to the development; and</i></li> <li>• <i>Fairly and reasonably related in scale and kind to the development.</i></li> </ul> <p>The Council has not adopted a Community Infrastructure Levy and therefore where a planning obligation is proposed for a development, The Community Infrastructure Levy Regulations 2010, which came into</p>

effect from 6 April 2010, has introduced regulation 122 which provides limitations on the use of planning obligations.

Regulation 123 introduces further limitation and these relate to the use of planning obligations for the purposes of infrastructure. Where a local authority has a published list for infrastructure projects, the authority may not seek contributions through a legal agreement through S106 of the 1990 Act. In this case, the authority does not have a published list and therefore it is appropriate to seek contributions through a S106 legal agreement. This would be in accordance with policies M4 and IM2 of the District Plan.

#### *Affordable housing*

The proposed development seeks permission for 26 residential units and in accordance with the adopted District Plan, the Council would expect this number of houses to include the provision of affordable housing. Paragraph 64 of the NPPF states that LPA's require a minimum of 10% affordable all major housing developments, which means proposals for 10, or more dwellings. In addition, Policy SP 7 of the emerging Local Plan requires that for a proposal of 11 or more new dwellings, a proportion of these houses should be affordable, with the exact percentage being dependant of the application site's location within the borough. In this case the proportion of the dwellings which should be affordable would be 35%. Given the advanced stage of this plan, whilst not adopted this is a material consideration that holds significant weight. Accordingly, it is considered reasonable that 35% affordable housing is sought to meet the needs of local people who cannot afford to occupy dwellings generally available on the open market.

As the applicant has proposed all the dwelling within this application would be affordable it is judged that in principle this level of provision would be in accordance with both local and national policy. Having said this as no S106 has been submitted as part of this application to secure the provision of this affordable housing in perpetuity and it is not judged that such requirement could not be appropriately secured by condition. As a consequence it is judged that this provision fails to meet the requirements for affordable housing on rural exception sites within Policy SP7 of the Emerging Local Plan.

#### *Hertfordshire County Council Contributions*

Confirmation has been received from Hertfordshire County Council that financial contributions are required to fund various Hertfordshire County Council projects in order to mitigate the impacts of the development including:-

- Primary Education (Woodside Primary School) - £55,314
- Library Services (Cuffley Library) - £4,271
- Youth Services (Hatfield Young People's Centre) - £853
- Fire hydrants

	<p><i>Welwyn Hatfield Contributions</i></p> <p>WHBC Client Services have found the proposal to be acceptable, subject to S106 contributions being provided to cover the costs of bin provision for the 26 units. In addition, it is considered in accordance with the Council's Planning Obligations SPD that contributions should be sought for Green Space and Play Facilities. In accordance with the Council's Planning Obligations SPD, a monitoring fee of up to a maximum of £5000 will also be required and payment will be required to be made prior to commencement of the development.</p> <p>These requested contributions are considered to be reasonable and to pass the necessary Community Infrastructure Levy 122 tests as the works are considered necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.</p> <p><i>Conclusion</i></p> <p>The applicant has not submitted a S106 agreement and it is considered that it is not possible to secure the legal agreement by way of condition. Given the requested contributions are entirely relevant and proportionate to the impact of the proposed development, it is considered that the Council would be acting unreasonably and failing its sustainability objectives were it to not obtain the contributions. Accordingly, it is considered that the proposal is contrary to Saved Policy IM2 and M4 the District Plan, the Planning Obligations SPD, Policy SP7 of the emerging Local Plan, the NPPF and CIL Regulations 2010, as amended.</p>
<p><b>Sustainability</b></p>	<p>Policy SD1 of the District Plan and Policy SP1 of the Emerging Local Plan require that proposals will be permitted where it can be demonstrated that the principles of sustainable development are satisfied and they accord with the objectives and policies of the Development Plan. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF outlines, in its introduction, three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles. Of particular relevance to this application is an economic role, among others, to ensure land is available in the right places to support growth; a social role to support strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations; as well as an environmental role which includes protecting and enhancing the environment.</p> <p>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.</p> <p>In favour of the scheme is a social benefit through the provision of 26 windfall affordable residential units. The Council are unable to demonstrate a five-year supply of deliverable housing sites. The latest published position (February 2019) states that the Council can only</p>

	<p>demonstrate a supply of 3.10 years. The proposed development would contribute towards the identified shortfall in housing supply, which is a benefit to which moderate weight is attached. Further to this, all 26 dwellings would be affordable, which would make a contribution to Borough wide affordable housing supply.</p> <p>In relation to the economy, the proposed development would make a small contribution through the provision of employment and the sale of materials associated with the construction of the dwellings. However, this benefit would be short term and is therefore afforded only limited weight. Whilst future occupiers of the development would support shops and services in the long term, this benefit would be spread over a wide area given the isolated location of the site and would therefore be limited in effect.</p> <p>It is not considered that these social and economic benefits of the scheme would outweigh the environmentally unsustainable location of the development and the environmental harms that have been identified within this report.</p>
<p><b>Very Special Circumstances</b></p>	<p>It is necessary to undertake a balancing exercise to establish whether there are very special circumstances that outweigh the harm to the Green Belt and, importantly, any other harm. This includes an assessment of the overall benefits of the scheme and the weight that should be attributed to them. It is for the decision maker to determine the amount of weight that should be attributed to each respective element.</p> <p>The proposal would cause harm to the Green Belt by reason of inappropriateness. It would cause harm to the physical and visual aspects of openness of the Green Belt and would result in the encroachment of built form into the countryside and would fail to assist in urban regeneration, conflicting with two of the five purposes of including land within the Green Belt. Substantial weight is attached to these factors. There would be harm to the landscape character and the appearance of the area which, again, has been afforded substantial weight. By virtue of its location and its remoteness from existing services and facilities, the proposal also has been found to represent an environmentally unsustainable form of development. Again substantial harm is attributed to this factor.</p> <p>Significant harm is attached to the absence of a S106 Legal Agreement and insufficient information provided in respect of flood risk and drainage on surface water drainage</p> <p>Turning to the benefits of the proposal it is accepted in case law that there is no prescribed list of what might constitute very special circumstances. It may be that a single aspect of a proposal may itself be a very special circumstance sufficient to justify development or it may be that a number of circumstances may cumulatively amount to very special circumstances. As Lord Justice Pill said in <i>South Bucks District Council v Secretary of State for Transport, Local Government and the Regions</i> [2003] EWCA Civ 687, [2003] All ER (D) 250 (May): <i>'It is of the essence of very special circumstances that the applicant establishing them is in a very special category.'</i> However, by their</p>



nature the existence of very special circumstances must relate to a particular site.

It is noted that the applicant has not sought to propose very special circumstances and argues through their application because they believe that they consider that the proposed development constitutes an appropriate form of development within the Green Belt. It is judged that the arguments that they have raised to support this application have already been discussed above with the exception of housing supply. As a consequence, for completeness this is discussed below.

The application has stated that the Council's failure to have a 5-year supply of housing amount to a very special circumstance in the case of this application.

It is judged that the failure of the Council's or any Councils which is heavy constrained by Green Belt to deliver a five year housing land supply is not exceptional or indeed special. This can be seen by the fact that other Hertfordshire authorities that are similarly constrained by Green Belt have struggled or are struggling to deliver a five year housing supply. This constraint on land supply is further exacerbated by the Council's proximity to London which places additional pressure on the demand for housing. Moreover, it is important to note that Paragraph 136 of the NPPF outlines that alterations to the Green Belt boundaries should only be altered in exceptional circumstances and through the Local Plan process only and not ad-hoc planning permissions. In this instance, the Council's Emerging Local Plan is currently at examination where Green Belt boundaries have already been proposed and no alterations have been proposed to the Green Belt in this location.

In addition, it is the Council's position that the ministerial statement 2013, the Courts and the NPPF 2019 are clear that the lack of a five year housing land supply would be insufficient on its own to justify housing on Green Belt land. The ministerial statement from 2013 clarified the government's position on whether unmet housing need overcome Green Belt limitation by stating as that unmet demand for housing is unlikely to outweigh the harm to the Green Belt and other harm so as to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt. (Ministerial Statement 1 July 2013)

Although the Ministerial Statement pre-date the current NPPF it is considered that the revisions within the revised NPPF do not alter the significance of them. This is because it is considered that paragraph 11 and footnote 6 make clear that Green Belt restrictions set out within the NPPF should not be overridden by the lack of a five year housing land supply.

As a consequence, although it is judged that this failure of deliver would be a significant factor within the determination of an application outside the Green Belt, given the limitation that exist within the Green Belt and the importance that the Government attaches to the Green Belt it is judged that it only adds moderate weight in favour of the proposal.

By their nature the existence of very special circumstances must relate

	to a particular site. It is considered that the considerations put forward by the applicant do not individually or collectively clearly outweigh the harm identified as a result of the proposed development such as to justify the development on the basis of very special circumstances. Additionally it is not apparent that there are any other considerations.
<b>Conclusion</b>	
In conclusion, the proposed development would result in conflict with the District Plan, the Emerging Local Plan and the NPPF. There are no material considerations of sufficient weight or importance that clearly outweigh the substantial harm identified to the Green Belt and the other harms identified so as to amount to the very special circumstances necessary to justify the proposal. For the reasons given above it is recommended that planning permission is refused.	

**Reasons for Refusal:**

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 exist which outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm identified. Accordingly, the proposal fails to comply with Policies H2, RA10 and D2 of the Welwyn Hatfield District Plan 2005; Supplementary Design Guidance; Policies SADM1 and SADM34 of the Draft Local Plan Proposed Submission 2016; and the National Planning Policy Framework 2019.
2. By virtue of its location and its remoteness from existing services and facilities and, in particular, from existing infrastructure in the area, the proposal is contrary to the settlement strategy of the Council and represents an environmentally unsustainable form of development. As such, the proposal is contrary to Policies SD1, H1, H2, GBSP1 and GBSP2 of the adopted Welwyn Hatfield District Plan 2005; Policies SADM1 and SP1 of the Draft Local Plan Proposed Submission 2016; and the National Planning Policy Framework 2019.
3. The proposed number and layout of dwellings fails to improve the character and quality of the area and the way it functions because they would neither conserve, maintain, enhance nor strengthen the character of the wider surrounding area. Accordingly the proposal fails to comply with Policies D1, D2 and RA10 of the Welwyn Hatfield District Plan 2005; Supplementary Design Guidance; Policies SP9 and SADM16 of the Draft Local Plan Proposed Submission 2016; and the National Planning Policy Framework 2019.
4. The applicant has failed to satisfy the sustainability aims of the Development 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 IM2, M4 and H7 of the Welwyn Hatfield District Plan 2005; Policy SP7 of the Draft Local Plan Proposed Submission 2016; and the National Planning Policy Framework 2019.

5. Insufficient information has been provided as part of this application to enable the Local Planning Authority to fully assess the drainage implications arising from the proposed development and to demonstrate that the development would not increase the flood risk elsewhere. Accordingly the proposed development poses a threat to the quality of both surface and /or groundwater, contrary to Policy R7 of the Welwyn Hatfield District Plan 2005, Policy SADM14 of the Draft Local Plan Proposed Submission 2016 and the National Planning Policy Framework 2019.
6. The development fails to promote opportunities to travel by non-car based modes of travel and it fails to provide safe, and suitable access for all users. As a consequence, the proposed development fails to accord with Policy D5 of the District Plan 2005, Policies SP4 and SADM3 of the Draft Local Plan Proposed Submission 2016 and the National Planning Policy Framework 2019.
7. As no S106 has been submitted as part of this application which addresses the concerns raised by Herts Ecology it is considered that in accordance with their advice the current proposal is unacceptable in ecological terms. Accordingly the proposed development is contrary to Policy R11 of the District Plan: Policy SADM16 of the Draft Local Plan Proposed Submission 2016; and the National Planning Policy Framework 2019.

#### REFUSED DRAWING NUMBERS

Plan Number	Revision Number	Details	Received Date
PL02		Existing Site Layout	7 June 2019
PL03		Proposed Site Plan	7 June 2019
PL01		Street Scenes Background	7 June 2019
PL05		Perspective 1 Coloured	7 June 2019
PL06		3d Model Coloured	7 June 2019
PL110		Plots 1 2 Floor Plans	7 June 2019
PL11		Plots 1 2 Elevations	7 June 2019
PL12		Plots 3 4 And 6 7 Floor Plans	7 June 2019
PL13		Plots 3 4 And 6 7 Elevations	7 June 2019
PL14		Plot 5 Floor Plans	7 June 2019
PL15		Plot 5 Elevations	7 June 2019
PL16		Floor Plans	7 June 2019
PL17		Plots 8 11 Elevations	7 June 2019
PL18		Plots 12 13 And 22 23 Floor Plans	7 June 2019
PL19		Plots 12 13 And 22 23 Elevations	7 June 2019

PL20		PI20 Plots 14 21 Floor Plans	7 June 2019
PL21		Plots 14 21 Elevations	7 June 2019
PL22		Plots 24 26 Floor Plans	7 June 2019
PL23		Plots 24 26 Elevations	7 June 2019
PL01		Location Plan	7 June 2019
LP/LEFWC NH/020	A	Land To The East Of Firs Wood Close Landscape Master Plan	7 June 2019

#### 1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

#### **Determined By:**

Mrs Sue Tiley  
17 September 2019