



TOWN AND COUNTRY PLANNING ACT 1990 (as amended)
APPEAL BY: Countryside Partnerships Ltd and Wattsdown Developments Ltd

An Appeal against the refusal of planning permission by East Hertfordshire District Council of an outline application for:

Outline planning application (with all matters reserved except for access) for up to 350 dwellings, up to 4,400 sqm of commercial and services floorspace (Use Class E and B8), and up to 500 sqm of retail floorspace (Use Classes E) and other associated works including drainage, access into the site from the A10 and Luynes Rise (but not access within the site), allotments, public open space and landscaping.

at **Land East of the A10, Buntingford, Hertfordshire**

East Hertfordshire District Council reference: **3/23/1447/OUT**

STATEMENT OF CASE

**Prepared by
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March 2024



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Appendices

Appendix 1 – Decision Notice for application ref. 3/22/1551/FUL (2022 Proposals)

Appendix 2 – Decision Notice for application ref. 3/23/1447/OUT (the Appeal Proposal)

Appendix 3 – Officer’s Report for application ref. 3/23/1447/OUT (the Appeal Proposal)

1.0 INTRODUCTION AND BACKGROUND

- 1.1 This Statement of Case ('Statement') is submitted on behalf of Countryside Partnerships Ltd and Wattsdown Developments Ltd ('the Appellant') in support of an appeal ('the Appeal') following the refusal of outline planning permission (all matters reserved other than access) by the Local Planning Authority (LPA), East Hertfordshire District Council ('EHC') for the erection of up to 350 dwellings, up to 4,400 sqm of commercial and services floorspace (Use Class E and B8) and up to 500 sqm of retail floorspace (Use Class E) on Land East of the A10, Buntingford, Hertfordshire ('the Appeal Site').
- 1.2 The statutory determination timescales were extended by agreement between parties a number of times, the latest being to 19 January 2024. The decision notice was received by the LPA on 15 February 2024. The determination of the application was made after the Appellant served a notification of intent to appeal the LPA's failure to determine the application within the statutory timescales.
- 1.3 A request for a Screening Opinion was made to the Council, on behalf of the Appellants, on the 24 March 2021, prior to an earlier application relating to a similar scale of development on the same land. A negative opinion was received on the 21 May 2021 confirming that the development did not require an Environmental Impact Assessment (EIA).
- 1.4 This Statement sets out why the Appellant considers that the Application should have been granted and outlines the evidence which the Appellant proposes to call in support of its case at an inquiry.
- 1.5 The Application was received by EHC and validated on the 27 July 2023 (LPA Reference Number: **3/23/1447/OUT**).
- 1.6 The full description of development for the Application is set out below:
- 'Outline planning application (with all matters reserved except for access) for up to 350 dwellings, up to 4,400 sqm of commercial and services floorspace (Use Class E and B8), and up to 500 sqm of retail floorspace (Use Classes E) and other associated works including drainage, access into the site from the A10 and Luynes Rise (but not access within the site), allotments, public open space and landscaping.'*
- 1.7 The above works are referred to as the 'Proposed Development' and the 'Appeal Proposals'.

- 1.8 A draft Statement of Common Ground has been prepared with the intention of being agreed with EHC in advance of the Appeal being heard.
- 1.9 A schedule of drawings and documents submitted by the Appellant as part of the Application is provided within the draft Statement of Common Ground (see paragraphs 3.14 - 3.15). Electronic copies of all the drawings and documents as listed in the draft Statement of Common Ground are provided with the Appeal submission.
- 1.10 A Core Documents schedule will be prepared for the purposes of the Appeal, following coordination with EHC; and the Appellant will also liaise with EHC to arrange an appeal library/website in due course.

2.0 SITE LOCATION AND CONTEXT

2.1 A description of the Appeal Site and surrounding area is provided in **Section 2** of the supporting Statement of Common Ground (SoCG).

Planning History

2.2 The Appeal Site has an extensive planning history as set out in the table contained at **Pages 11-13** of the submitted Planning Statement (July 2023).

2.3 The proposal which is subject to this Appeal sought to address previous Reasons for Refusal (RfR), as imposed by the Local Planning Authority on their Decision Notice for application reference 3/22/1551/FUL (dated 9 November 2022) (see **Appendix 1**).

2.4 The LPA's most recent decision (ref. 3/23/1447/OUT) cites a total of five reasons for refusal as detailed in the Decision Notice (**Appendix 2**). This is discussed further below. A copy of the Officer's Report is also enclosed at **Appendix 3**.



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3.0 THE APPEAL PROPOSALS

3.1 An overview of the Appeal Proposal is provided as part of the **Section 3** of the supporting SoGC.

4.0 PLANNING POLICY CONTEXT

- 4.1 An overview of the relevant planning policy and guidance is provided as part of the **Section 5** of the supporting SoGC.
- 4.2 The Appellants will adduce evidence in respect of the development plan as it relates to the proposal, the weight to be given to this and its interrelationship with central government policy, principally the National Planning Policy Framework and National Planning Practice Guidance and other relevant policy documents/standards.
- 4.3 At the time of the preparation of this SoC, and as further outlined in the SoCG, EHC accept that they cannot currently demonstrate a five-year supply of deliverable housing sites. As part of the appeal the Appellant will present a detailed review of EHC's housing land supply in the context of the NPPF December 2023.
- 4.4 As part of the appeal the Appellant will present a review of EHC's affordable housing delivery in the District.
- 4.5 The Appellants reserve the right to cite other policy documents, guidance, authorities, appeal decisions and other documents which may become relevant to the consideration of the appeal as it progresses.

5.0 THE APPELLANT'S CASE

The Decision

- 5.1 The planning application was determined under delegated powers and refused for 5 reasons. A copy of the decision notice is provided as **Appendix 2**.
- 5.2 Reason for Refusal (RfR) 1 is based on the principle of development and impact of the development on the landscape character, rural appearance, and distinctiveness of the area.
- 5.3 RfR 2 is based on the sustainability of the proposals and EHC's opinion that the proposals will rely on the private car to access employment, main food and comparison shopping elsewhere.
- 5.4 RfR 3 concerns the quantum of development and concerns surrounding density and the transition into the countryside.
- 5.5 RfR 4 directly relates to the absence of a planning obligation.
- 5.6 RfR 5 relates to insufficient information being available to demonstrate that the proposal would not have an unacceptable impact on flood risk.
- 5.7 In respect of RfR 4, attempts were made by the Appellants during the latter part of the determination period to seek discussion on Heads of Terms and the obligation requests received as part of the application process. Whilst Officers acknowledged this, a meeting was never arranged. The Appellants will provide a completed obligation in due course.
- 5.8 In respect of RfR 5, additional information was submitted to the LPA in the form of an FRA Addendum on the 21 November 2023. The purpose of the FRA Addendum was to address comments raised by the Lead Local Flood Authority in their original response to the application dated the 23 October 2023. At the time of determination, no further comments were received by the LLFA in response to the additional information submitted despite attempts to speak with the LLFA direct and via the LPA.
- 5.9 Evidence will be adduced on each of the matters cited in reasons for refusal 1 – 3 and 5, unless withdrawn or satisfactorily addressed in the agreed Statement of Common Ground. For the purposes of this SoC however, it is taken that each will continue to be contested by the LPA.

- 5.10 Given the nature and extent of the issues between the main parties, substantive technical evidence will be required to be considered. This will necessitate formal examination and cross examination.
- 5.11 The Appellants contest the Council's reasons for refusal, and will demonstrate that on a properly assessed basis, having regard to correct assessment and appliance of planning policy and other standards, as well as other material considerations, planning permission should not have been withheld.

Basis for the Appeal

Conformity with the Development Plan

- 5.12 The starting point for the Appellants' case is that the development proposal accords with the development plan read as a whole. As such, and in accordance with paragraph 11 (c) of the Framework, the proposals are sustainable development and planning permission should be granted without delay.

The Principle of Development

- 5.13 Buntingford is one of five main towns in EHC's district. With the exception of Buntingford, the main settlements are all located in the south of the district and are surrounded by Green Belt. Buntingford therefore represents a sustainable and unconstrained settlement within East Herts district.
- 5.14 The Appeal Site is located immediately adjacent to Buntingford, with linkages through to the existing settlement by way of existing PRow and the Luyne Rise Active Travel Route. The site is located in close proximity to facilities and services provided in Buntingford including schools, a community hall, library, health centre, pubs, sports facilities, post office and convenience stores. The Appeal Site is approximately 900m from Buntingford's main town centre facilities by the shortest walking route.
- 5.15 The Appeal Site therefore represents a sustainable location on the edge of a sustainable settlement, which is unconstrained by Green Belt.
- 5.16 Policy DPS2 of the East Herts District Plan (2018) identifies a hierarchy for directing development as follows:

- Sustainable brownfield sites;
- Sites within the urban areas of Bishops Stortford, Buntingford, Hertford,

- Sawbridgeworth and Ware;
- Urban extensions to Bishop’s Stortford, Hertford, Sawbridgeworth and Ware, and to the east of Stevenage, east of Welwyn Garden City and in the Gilston Area; and
- Limited development in the villages.

5.17 Notably, no urban extensions or further allocations were included in the East Herts District Plan for Buntingford, despite it being one of the main settlements in the plan area. This was on the basis that a substantial level of retrospective development had been granted in the town since 2011 and prior to the District Plan’s adoption.

5.18 The hierarchy identified by DPS2 was based upon a housing requirement of 18,458 new homes in the district between 2011 and 2033 (the target set by Policy DPS1). Strategic policies DPS1 and DPS2 are in excess of five years old and have not been subject to review. The Appellant will present evidence to demonstrate that the overall housing target, upon which strategic policies in the East Herts District Plan (2018) are based, is too low to meet current housing needs for the area. Material considerations therefore demonstrate that strategic policies within the development are not robust and the weight applied to any conflict with them in decision making should be tempered accordingly.

5.19 Furthermore, EHC presently conclude that they are unable to demonstrate a five-year supply of deliverable housing sites and therefore, the ‘tilted balance’ is engaged in the decision-making process. The tilted balance refers to paragraph 11(d) of the NPPF which states that if the most relevant Local Plan policies for determining a planning application are out of date (such as when a five-year housing land supply cannot be demonstrated), the application should be approved unless the application of NPPF policies that protect areas or assets of particular importance (as defined by the NPPF) provide a clear reason for refusing permission, or the harm caused by the application significantly and demonstrably outweighs the benefits, when assessed against policies of the NPPF as a whole. As part of the appeal the Appellant will present a detailed review of EHC’s housing land supply in the context of the NPPF December 2023.

5.20 In this context, policies which are most important for determining the application are to be regarded as out of date. In the case of the Appeal Site, this will include policies DPS2, GBR2 and BUNT1 of the East District Local Plan (2018), in addition to policy HD1, HD2 and HD4 of the Buntingford Community Area Neighbourhood Plan (2017).

- 5.21 In accordance with paragraph 11(d)(ii) and footnote 7 of the NPPF, the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed.
- 5.22 As illustrated by the planning application submission, there are numerous economic, social, and environmental benefits associated with the delivery of the Appeal proposed.
- 5.23 The provisions of paragraph 14 of the NPPF (December 2023) do not apply to the Buntingford Community Area Neighbourhood Plan (2017).
- 5.24 The Appellant will present evidence which demonstrates that any adverse impacts of approving the Appeal Proposals would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 5.25 In summary, the Appellant will demonstrate that that ‘tilted balance’ applies and tilts in favour of approving the Appeal Proposals.

Quantum of Development

- 5.26 Despite numerous attempts by the Appellant to engage EHC in the preparation of the Development Framework Plan, it has not been possible to secure such engagement. EHC were unwilling to engage in pre-application discussions in 2022 owing to a lack of resource and in-principal concerns with the proposal on the basis that they consider the site to be a departure from the Council’s development strategy as set out in policy DPS2.
- 5.27 A design review workshop via the Hertfordshire Design Review Panel was requested with EHC during the initial stages of the previous 2022 planning application progression; however, the EHC were unwilling to engage in this process. An independent design review was instead secured with The Design Review Panel East on 13 April 2022 (EHC again decided not to engage with this process). The Design Review Panel feedback informed the masterplan and the written response was submitted in support of the planning application. The masterplan has subsequently informed the development framework plan and parameter plans for the application subject to the appeal.
- 5.28 Prior to the submission of the Appeal Proposals, the Appellants wrote to the LPA and a meeting was held on 24 May 2023. During the meeting, officers recommended that any new application should be subject to a masterplanning workshop with the community and

stakeholders and that the review of the masterplan was only needed on two fundamental issues: (a) sustainability and infrastructure; and (b) impact on the rural area and landscape.

- 5.29 However, Officers further advised that the masterplanning process referred to in Policy DES1 (which would usually involve a steering group of East Herts officers, councillors, and local community groups) was intended for Local Plan allocated sites and which would result in the masterplan being endorsed by Committee before an application is made. This would not be the case for the Appeal Site, and as a consequence, could not lead to any Committee endorsement. Council Officers also expressed doubt over whether stakeholders would engage in the masterplanning process.
- 5.30 This position was further reviewed at a meeting with Council Officers on the 7 November 2023 and it was acknowledged that the requirement of the Policy DES1 did not accord to the context of the planning application.
- 5.31 On this basis, the Appellant did not pursue any further attempts to secure a masterplanning workshop with EHC officers, councillors and local community groups. Further, on the basis that the application was submitted in outline, it is the Appellant's view that a masterplan led process could be agreed as a planning condition. The Appeal Proposal is also seeking 'up to' 350 dwellings, 'up to' 4,400sqm of commercial and services floorspace and 'up to' 500 sqm of retail floorspace, therefore if the LPA feel that quantum is an issue, this is something that could be dealt with at reserved matters stage. It would be open to the Appeal Inspector to impose a condition requiring general conformity with the Development Framework Plan and/or parameter plans if considered appropriate.
- 5.32 Notwithstanding that layout and scale are matters reserved for future determination, the proposed density of development across the site (as illustrated on the Development Framework and parameters plans) has been informed by the wider site context, ensuring that the density respects the adjacent urban area.
- 5.33 The Appellant will present evidence to demonstrate that the Appeal Proposals satisfies the relevant requirements of Policy DES2, DES3, DES4, GBR2 and HOU2 of the East Herts District Local Plan (2018), Policy ES1, HD1, HD2 and HD4 of the Buntingford Community Area Neighbourhood Plan 2014-2031 and that the proposed upper quantum of development can be accommodated without causing any significant harm which would outweigh the benefits of the development.

Sustainability of the Proposals

- 5.34 It is pertinent to note that the Highway Authority has offered no objection to the proposals on highway grounds and the application has been submitted in outline form with all matters reserved except for access.
- 5.35 The Appellant will present evidence to demonstrate that the proposal represents a sustainable form of development which is capable of delivering a high-quality form of development with a high standard of residential amenity for future and existing residents.
- 5.36 The proposal includes a local centre, employment uses and public open spaces (including play areas and allotments) which will assist in meeting the day-to-day needs of future residents (in addition to existing residents of Buntingford) and thereby reducing the need for residents to travel by car beyond the development site. In addition, the proposal includes linkages into the pedestrian and cycle network, providing access between the development site and Buntingford, and can facilitate increased access to public transport options. HCC Highways have requested financial contributions towards bus services and off-site connectivity improvements and positive discussions are ongoing with Arriva to see the 331 bus service extended through the Buntingford West scheme to use the bus link to Luynes Rise. This gives a better looped service route through the town than the existing “turn-around and come back” route.

Landscape and Visual Impact

- 5.37 The Appellant contends that the Appeal Proposals have been designed to create a viable and attractive community that complements the character of Buntingford and provides a logical, contained extension of the town, sympathetic to the settlement pattern. The Appeal Site is separated from the open countryside to the west by the A10 and whilst currently in agricultural use it has typical urban fringe characteristics, lying between the built-up area and the bypass.
- 5.38 It is accepted that the development would represent a change from the existing character of the agricultural fields, and a change in outlook for users of the PRow which cross the Appeal Site and existing dwellings with views over the Appeal Site. However, this would be likely to be the case in the event of any form of greenfield development.
- 5.39 No significant or valuable landscape features would be lost as a result of the development and as outlined in the LVIA submitted in support of the planning application, any landscape

harm would be at a relatively low level, would affect a limited area around the site and would reduce over time.

- 5.40 The development itself would not be intrusive in the wider landscape, from which it is isolated by the A10 bypass, and is contained by development along Baldock Road to the north and by Buntingford Sewage Treatment Works to the south. The A10, together with the traffic passing along it and the trees to each side of it, does form a physical and visual barrier and does enclose the Appeal Site against the edge of the settlement, separating it from more open countryside to the west. In overall terms, the impact of the development on the wider landscape setting of the town would be limited having regard to its location and surrounding land uses.
- 5.41 The Appellant accepts that the Appeal Proposals would result in the development of most of the existing agricultural land which currently exists between the edge of the settlement and the A10, however the Appellant contends that any landscape harm would be limited and considers the A10 would form a logical and robust boundary to the expanded settlement. The Appeal Site represents a more appropriate and logical extension to Buntingford, in terms of landscape effects, that an extension into the open countryside with no obvious defining or enclosing feature.
- 5.42 The Appellant will present evidence to demonstrate that the Appeal Proposals would lead to no significant conflict with policies DES 2, DES3, DES4, GBR2 and HOU2 of the East Herts District Plan (2018).
- 5.43 Whilst there would be some degree of conflict with Policies ES1 and HD2 of the Buntingford Community Area Neighbourhood Plan, as there would be some adverse landscape character effects, such effects would be at a relatively low level, localised and would further decline with time as the extensive landscape proposals begin to mature.
- 5.44 When weighed in the overall planning balance, the Appellant contends that limited weight should be afforded to any landscape and visual harm (commensurate with the limited degree of harm). It would not amount to significant harm which would outweigh the benefits of the development.

Flood Risk

- 5.45 The Appellants will adduce evidence and will demonstrate that the Flood Risk Assessment and Drainage Strategy means that the development would not have an unacceptable impact on flood risk.
- 5.46 The Appellants will further show that this is a viable location to discharge the surface water runoff from the proposal and that the proposed drainage strategy is based on controlled discharge at Qbar greenfield rates for the developable area within the Site. SuDS in the form of swales, permeable paving and detention basis are proposed, as set out within the submissions.
- 5.47 The Appellants will demonstrate that the proposed surface water strategy will be designed to ensure flows arising from the 1 in 100-year event plus 40% climate change can be controlled within the proposed drainage strategy and that no offsite flooding will occur during a 1 in 100 year plus 40% climate change event.
- 5.48 Further, it is of note that within the response from Thames Water to the planning application, conditions were requested in respect of foul and surface water.
- 5.49 The Appellants will show that based on the above strategy, the development proposal accords with policies WAT1, WAT3, WAT4, WAT5 and WAT6 of the East Herts District Plan (2018) and the National Planning Policy Framework.

Benefits of the Proposed Development

- 5.50 The Appellant will present evidence of the economic, social and environmental benefits of the proposal.
- 5.51 It will be demonstrated that no adverse impacts would arise as a result of the development which would significantly and demonstrably outweigh the benefits of the proposal.

6.0 PLANNING CONDITIONS AND OBLIGATIONS

- 6.1 High level heads of terms were submitted by the Appellant as part of the planning application. To date a planning obligation has not been progressed.
- 6.2 During the council's consideration of the planning application, requests for S106 contributions have been made by Hertfordshire County Council, Sports England, the East of England Ambulance Service, the NHS, East Herts District Council and Buntingford Town Council.
- 6.3 In advance of the appeal being heard, the Appellant will liaise with EHC and HCC with a view to agreeing the terms of a planning obligation under Section 106 of the Town and Country Planning Act 1990 to support the appeal.
- 6.4 The Appellant will seek to agree a list of conditions with the LPA in the final version of the Statement of Common Ground.

7.0 THE APPEAL PROCEDURE

7.1 The Appellant considers a Public Inquiry to be the most appropriate procedure for this Appeal for the following reasons:

- (a) Cross-examination will be required in relation to the housing land supply position, the weight to be afforded to development plan policies, interpretation of relevant development plan policies and design/landscaping matters.
- (b) The complexities of the housing land supply position (which involves the presentation of highly technical data in evidence) and the weight to be afforded to development plan policies, in the context of the NPPF (as revised December 2023) warrant a Public Inquiry;
- (c) Legal submissions as to the correct weight to be applied and the correct interpretation of relevant development plan policies, in the context of the NPPF (December 2023) will need to be made; and
- (d) The proposal has generated substantial local interest. At the time of the submission of this Statement of Case a total of 1,063 public comments have been submitted to EHC's online file for planning application reference 3/23/1447/OUT. A Public Inquiry will allow all interested parties to actively participate.

7.2 At this time the Appellant anticipates the witnesses will need to be called to address the following matters:

- 1) *Planning*
- 2) *Housing land supply*
- 3) *Design*
- 4) *Landscape and visual impact*
- 5) *Drainage*

7.3 Depending on other issues that may be in dispute, the Appellant reserves the right to call further witnesses as may be required.

7.4 At this stage, the Appellant considered that the Inquiry is likely to last between 6 and 8 sitting days (this allows one day for each of the witnesses listed above in addition to openings, closing and a site visit), however this will be dependent upon matters agreed in the Statement of Common Ground and the presence of Rule 6 parties.

7.5 Given the anticipated length of the Inquiry, the Appellant assumes that a bespoke timetable will be prepared by PINS and a Case Management Conference will be scheduled once an Inspector has been allocated.



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7.6 Discussions regarding the most suitable venue for an Inquiry have not yet been progressed with EHC but will follow shortly after the submission of the Appeal.

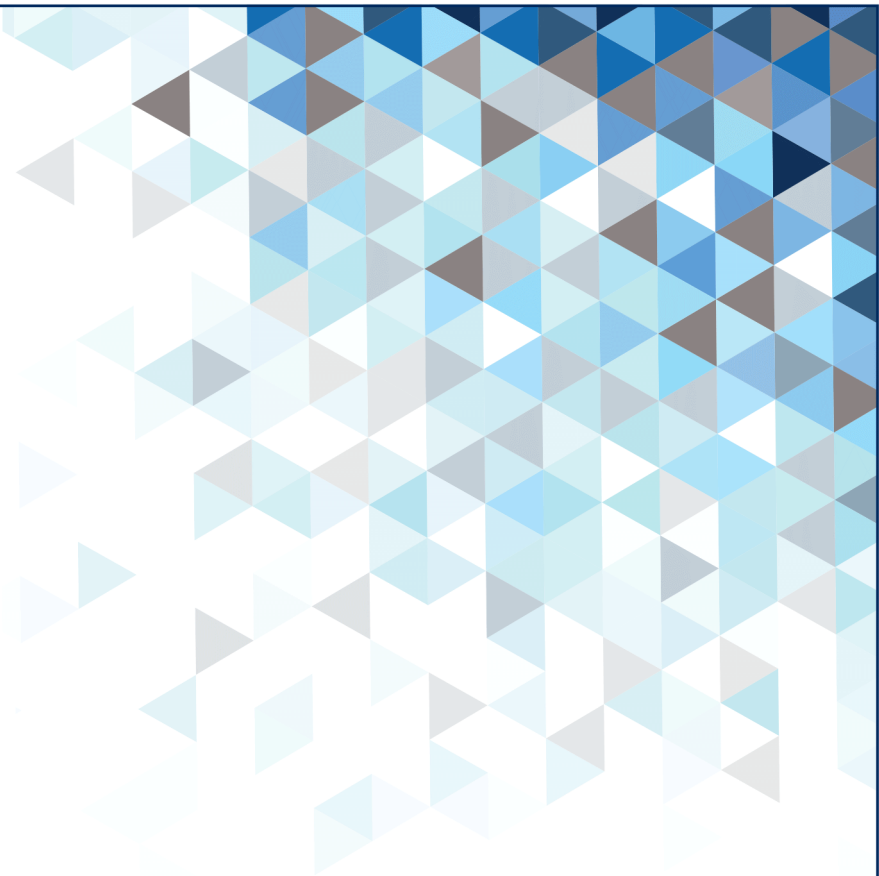
8.0 CONCLUSION

8.1 The Appellant will demonstrate that:

- a) EHDC cannot demonstrate a five-year housing land supply against local housing needs, as required by paragraph 77 of the NPPF (December 2023). There are no policies within the NPPF which provide a clear reason for refusal. The presumption in favour of sustainable development therefore applies;
- b) Development plan policies which are most important for determining the application are to be regarded as out of date. In the case of the Appeal Site, this will include policies DPS1, DPS2, GBR2, HOU2 and BUNT1 of the East District Local Plan (2018), in addition to policy HD1 of the Buntingford Community Area Neighbourhood Plan (2017).
- c) Any degree of conflict with policies ES1, HD2, HD4 and BE2 of the Buntingford Community Area Neighbourhood Plan is limited and should be afforded commensurate weight in the overall planning balance;
- d) The Appeal Proposals accords with the other relevant policies of the development plan when read as a whole;
- e) The proposal will deliver a viable and attractive community that complements the character of Buntingford and provides a logical, contained extension of the town, sympathetic to the settlement pattern. No significant harm to landscape character or visual amenity will arise as a result of the proposed development.
- f) All technical impacts have been fully assessed in the planning application, and mitigation measures identified and incorporated where necessary. The proposals are entirely appropriate for the Appeal Site and the surrounding area.
- g) The proposal will make a significant contribution to the LPA's housing land supply and will deliver a wide range of economic, social, and environmental benefits.
- h) No adverse impacts would arise as a result of the development which would significantly and demonstrable outweigh the benefits of the proposal. On this basis the 'tilted balance' tilts in favour of approving the Appeal Proposals.

8.2 Planning conditions will be agreed with EHC in advance of the inquiry to ensure that if the proposed development were to be permitted it would be acceptable in planning terms. A Section 106 Agreement will be progressed in advance of the appeal being heard.

8.3 The Appellant will demonstrate that in all circumstances, planning permission should be granted for the proposed development.



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