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## Appeal Decision

Inquiry (Virtual) held on 11 May 2021 and 20 to 23 September 2021

Site visit made on 28 September 2021

**by M Philpott BA(Hons) MA MRTPI**

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

**Decision date: 5 November 2021**

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**Appeal Ref: APP/X0415/W/20/3265964**

**Land off High View, Chalfont St Giles**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Paradigm Housing Group against the decision of Buckinghamshire Council – East Area (Chiltern)
  - The application Ref PL/19/4421/FA, dated 18 December 2019, was refused by notice dated 28 August 2020.
  - The development proposed is erection of 42 affordable dwellings and associated access, parking and landscaping.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Buckinghamshire Council – East Area (Chiltern) against Paradigm Housing Group. This application is the subject of a separate decision.

### Procedural Matters

3. The National Planning Policy Framework (Framework) was revised on 20 July 2021. It replaces the version from 2019 that the Council took into account when it determined the application. Through the appeal process, all parties have been able to consider the implications of the current version of the Framework and identify the policies most relevant to the issues in contention.
4. During the appeal, a revised drainage arrangement<sup>1</sup> was submitted which shows the relocation of borehole soakaways and an underground storage tank within the appeal site. A corresponding site plan<sup>2</sup> was also submitted. Consultation on the revised arrangement was undertaken. An adequate opportunity was provided for the Council and interested parties to consider and make comments on the arrangement. Prejudice would not arise from my consideration of the arrangement and thus I have taken it into account in determining the appeal.
5. The Council confirmed that its second and third refusal reasons, which relate to matters of biodiversity and the disposal of surface water, would be addressed

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<sup>1</sup> Drawing reference: 24731\_01\_010\_02 Rev B

<sup>2</sup> Drawing reference: P18-2331\_13 Rev S

subject to the completion of a Unilateral Undertaking (UU) that was provided in draft form at the Inquiry. A completed version of the UU was submitted subsequently. The main issues identified below reflect the remaining areas of dispute between the appellant and the Council.

6. The Inquiry was closed in writing on 28 September 2021.

### **Main Issues**

7. The main issues are:

- whether or not the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt and the purposes of including land within it; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

### **Reasons**

#### ***Inappropriate development***

8. The site consists of approximately 2.38 hectares of undeveloped land within the Green Belt and is adjacent to the settlement of Chalfont St Giles. The parish within which the site is located shares its name with the settlement. The site forms part of a grassed field with occasional trees within it. The remainder of the field and hedgerows, trees and residential gardens are located along the site's boundaries.
9. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, paragraph 149(f) of the Framework sets out that an exception to inappropriate development includes limited affordable housing for local community needs under policies set out in the development plan, which includes policies for rural exception sites. The Framework refers to rural exception sites as 'small sites used for affordable housing in perpetuity where sites would not normally be used for housing'. The appellant contends that the proposal is not inappropriate development as it falls within the paragraph 149(f) exception.
10. Policy CS9 of the Core Strategy for Chiltern District (CS) and Housing Policy 1 (Policy H1) of the Neighbourhood Plan for Chalfont St Giles Parish (NP) are relevant to the paragraph 149(f) exception. These provide for proposals to be permitted that would otherwise be inappropriate development; however, this is subject to various criteria being satisfied.
11. The appellant alleges that CS Policy CS9 is inconsistent with the Framework insofar as one of its criteria requires 100 percent affordable housing to be provided, whereas the Framework offers more flexibility. However, the Framework explains that a proportion of market homes may be allowed on rural exception sites at the discretion of local planning authorities; it does not state that rural exception sites policies must provide for market housing. I

consider that CS Policy CS9 is consistent with the Framework. In any event, only affordable housing is proposed. As such, even if I had found the policy to be inconsistent with the Framework in the way that the appellant claims, that inconsistency would have limited relevance in the particular circumstances of this case. It is not alleged that NP Policy H1 is inconsistent with the Framework and there is no evidence suggesting otherwise.

12. In addition, Policy GB2 of the Chiltern District Local Plan (LP) states that most development in the Green Belt is inappropriate and that there is a general presumption against such development. It also includes exceptions to inappropriate development, but none are comparable to the one at paragraph 149(f) of the Framework. The proposal therefore conflicts with LP Policy GB2, albeit this conflict attracts limited weight given that the policy is inconsistent with the Framework. CS Policy CS9 and NP Policy H1 are more important in the determination of this appeal.
13. The Council contends that the proposal would be inappropriate development as it would fail to satisfy several of the criteria of CS Policy CS9 and NP Policy H1. These are considered under the sub-headings set out below.

*Affordable housing need*

14. Policy CS9 of the CS requires that there is an established need for the proposed affordable housing and that the development is no greater than required to meet current need. It also requires that the housing is provided for people with strong and demonstrable local connections. NP Policy H1 echoes these criteria.
15. The NP provides a definition of 'local connection' in an appendix. In summary, the term includes a person who has lived in the relevant area for not less than 5 years; lived in the relevant area immediately prior to the application and has relatives who have lived there for not less than 5 years; has regular employment there; or has moved from there in the past 5 years due to a lack of suitable accommodation. 'Relevant area' is also defined. It refers to qualifying persons from the parish, but also from neighbouring parishes and beyond in a cascade arrangement. However, NP Policy H1 refers to people with strong local connections to the parish of Chalfont St Giles specifically.
16. Accordingly, the Council's interpretation is that there must be an established need for people with strong and demonstrable local connections to Chalfont St Giles for the proposal to accord with the requirements of NP Policy H1 and CS Policy CS9. Furthermore, where persons living in the parish are identified as needing affordable housing, it must be demonstrated that those persons have lived in the parish, or have relatives who have lived there, for no less than 5 years for the proposal to comply with the development plan policies.
17. Clearly some criteria need to be applied to guide an assessment of whether those in need have strong local connections. It would be difficult to justify concluding that a person who has lived in Chalfont St Giles for only one or 2 years, and more so a person who has a relative who has lived there for that length of time, has a strong local connection to the parish. However, it is rational that someone would be more connected to the parish if they or relatives have lived there for 5 or more years. Additionally, I note that the NP refers to residential periods of no less than 5 years in defining local connections and both development plan policies specify that 'strong' local connections should be demonstrated. A compelling alternative to the Council's

interpretation has not been advanced. For these reasons, I find that it is appropriate to apply the policies in the way interpreted by the Council and that is what I have done.

18. The appeal is supported by a Housing Needs Survey (HNS) that intends to quantify the level of affordable housing need in the parish using a basic needs assessment model. The HNS includes an assessment of household composition, housing costs and affordability, and results from a survey of households within the parish.
19. The appellant relies largely on a Good Practice Guide<sup>3</sup> to support the methodology for the HNS. Key principles of the Good Practice Guide, such as expressing flows of affordable housing need, are reflected in the Planning Practice Guidance (PPG)<sup>4</sup>, albeit the PPG makes no explicit reference to rural exception sites in respect of need calculations. Nonetheless, the Good Practice Guide is an appropriate source of guidance to inform the approach to calculating need. Moreover, I do not doubt that the appellant engaged with the Council in preparing the HNS prior to the survey being dispatched to households and that Chalfont St Giles Parish Council were provided with an opportunity to feed into the process.
20. The HNS clearly shows that Chalfont St Giles is a more expensive place to live than the Chiltern area and the south-east of England, and many households are unable to afford market housing in the parish. The Council accepts that the affordable housing stock in Chalfont St Giles is relatively limited, no consented schemes involve the delivery of affordable housing there, and no obvious sites for affordable housing in the settlement currently exist. Additionally, no affordable housing has been built there for the past several years. The NP identifies the lack of affordable housing as one of its key issues, with its first objective encouraging housing provision and emphasising affordable housing delivery. There is also a limited stock of rental properties in Chalfont St Giles. These factors indicate that there is a need for additional affordable housing in the parish.
21. Further, the Council can only demonstrate 4.18 years supply of deliverable housing sites. In addition, the Council must prepare an action plan because of its latest Housing Delivery Test results. No timescale has been put forward for the creation of a new local plan that might identify a strategy for addressing the unmet housing needs in the Chiltern area.
22. The household survey was sent to every household in the parish. There was a base response of 23 households in affordable housing need. From these results, the HNS estimates a flow of need of 42 units of affordable housing per annum. In part these outcomes are reached from crosstabulations of responses to certain survey questions that are grossed up via weighting factors, which differ depending on the age and tenure characteristics of the household representatives to compensate for non-responses and address potential underrepresentation of persons in need. There are 6 'sub-groups' of households in total, each with different weighting factors.

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<sup>3</sup> Local Housing Needs Assessment: A Guide to Good Practice, The Department of the Environment, Transport and the Regions, February 2000

<sup>4</sup> Principally the section entitled 'Housing and economic needs assessment'

23. The Council has no objection in principle to the use of the HNS model and does not dispute the sampling error for the overall survey. Nevertheless, the Council argues that weighting and grossing up the survey responses to infer need for the entire parish is statistically unsafe. This is on the basis that there may be limited numbers of respondents in some sub-groups and therefore the sampling errors for those sub-groups exceeds the one for the overall sample.
24. Neither the Good Practice Guide, nor guidance on which the Council relies from the National Network of Rural Housing Enablers<sup>5</sup>, provide clear guidance on this matter. However, the level of purported need and several other reported outcomes are based on the processing of sub-group data. It is rational that the base number of responses within a sub-group will affect the reliability of inferences made about that sub-group at parish population level. Logically there would be a greater likelihood of error in extrapolating need from one or a very small base number of survey responses within a sub-group than if a large number or nearly all that entire sub-group population responded to the survey, such that the weighting factor is small relative to the sub-group's size.
25. The base number of responses within each sub-group has not been provided. In addition, the appellant's housing need witness stated that few base responses may be from households in some sub-groups. Therefore, I cannot be certain that the weighted survey results reliably reflect the actual need for affordable housing at parish population level.
26. Furthermore, the household survey asked whether respondents lived at their address via multiple choice answers. The longest residency period that could be selected was 'over 3 years'. It did not ask for the location or length of occupation of residents' previous homes. Consequently, it is not possible to ascertain how many of those in need have been resident in the parish for no less than 5 years, or the duration of relatives' residency in the parish. The appellant's housing need witness confirmed that it was not possible to reasonably infer the length of residence from the other survey questions. Moreover, the duration of the residency of the 23 households in need has not been reported.
27. It is put forward that HNS methodologies are incapable of fully assessing households with a strong local connection; however, the survey could have asked the respondents to specify the precise length of time that they and their relatives have lived in the parish. Furthermore, I cannot be sure that persons in need have a strong local connection because of the passage of time since the survey was undertaken. Objective evidence has not been provided to indicate that there are large numbers of households in affordable housing need outside Chalfont St Giles which seek to live there and have a strong local connection. Additionally, there is no evidence of the levels of need from persons employed in the parish.
28. Consequently, the HNS does not demonstrate that there are persons in affordable housing need that have a strong local connection to the parish. I acknowledge that there are housing affordability, supply and delivery issues in Chalfont St Giles. However, even if I had found that the weighted survey results are reliable, I would nevertheless be unable to conclude that affordable housing need within the parish is such that there are likely to be 42 households with strong local connections.

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<sup>5</sup> Producing robust and influential rural housing needs surveys

29. The appellant and the Council agree that multiple data sources should be consulted to corroborate estimates of affordable housing need. In addition to the survey to households, the main sources to which the parties refer are the Council's housing register, its HEDNA<sup>6</sup>, the existing stock of housing and prevalence rates from the consultancy that prepared the appellant's HNS.
30. Around 24 applicants living in the parish are listed on the Council's housing register. Putting aside the requirements of CS Policy CS9 and NP Policy H1, factors such as the register's eligibility criteria, the size of the existing affordable and rental housing stock, potential preferences for home ownership and affordability concerns will result in the register underestimating need. This is indicated in the Good Practice Guide. Moreover, the register does not represent a flow of households. The appellant has therefore adjusted the register to an annual flow and included assumptions to account for newly forming households and potential home ownership demand. The resulting gross annual flow of households in need is similar to the weighted survey results.
31. However, the number of newly forming households is calculated using positive formation rates taken from the English Housing Survey. Those rates also influence the anticipated need for shared ownership units. Conversely, the Council referred to Office for National Statistics data which indicates that there was negative population change, and hence potentially negative household formation, in the parish between 2011 and 2019.
32. Whilst I note that the PPG suggests the English Housing Survey as a data source for calculating affordable housing need, a range of other sources, including household projections, are also identified. The Good Practice Guide states that new household formation should ideally be checked against past rates and demographic estimates. It is likely that the use of district or parish level data would enable more accurate need estimates to be calculated as these would reflect the distinctive local housing market. As such, I am not satisfied that the adjusted register data corroborates the weighted survey results. In any case, the register only requires 2 years local connection to the parish and thus the adjusted data does not reveal how many persons have strong local connections for the purposes of CS Policy CS9 and NP Policy H1.
33. The HEDNA intends to inform policy at district level and differs in purpose and methodology to the HNS. The main parties agree there is limited scope to use the HEDNA to corroborate the survey results. I see no reason to find otherwise. I have significant concerns with using the consultant's prevalence rates to estimate need as the figure produced via that method is based on several assumptions from nationwide survey data, which are unlikely to accurately reflect the specific characteristics of Chalfont St Giles. Additionally, given the lack of housing delivery in the parish, inferring the level of need based on the size of the existing housing stock would not be reliable either. The appellant also references a housing needs survey initially undertaken by Chalfont St Giles Parish Council in 2002. However, this cannot be relied upon as full details of the survey have not been provided and a significant amount of time has passed since it was undertaken. In any case, none of these sources reveal whether strong local connections to the parish exist.
34. The UU seeks to secure the provision of the affordable housing. However, it would enable an affordable housing unit to be allocated to a qualifying person

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<sup>6</sup> Chiltern and South Bucks Housing and Economic Needs Assessment 2019: Report of Findings, April 2019

with a local connection beyond the parish if a person is not nominated by the Council and someone with a local connection to the parish cannot be found within specific time periods. Consequently, the UU does not provide certainty that the housing would only be occupied by persons with a strong local connection to the parish specifically.

35. I note that the Council has not undertaken a HNS of its own or suggested what the level of need might be in Chalfont St Giles; however, the onus is on the appellant to demonstrate that need exists. Although the appellant's housing need consultant may have adopted similar approaches to surveying and estimating need elsewhere, this does not imply that this particular proposal complies with the relevant planning policies.
36. Overall, I am not satisfied that the weighted survey results or any of the other sources of evidence of need reliably represent affordable housing need for Chalfont St Giles as a whole. Moreover, the evidence does not demonstrate that there is a need for 42 affordable homes for persons with strong local connections to the parish. Consequently, the proposal conflicts with CS Policy CS9 and NP Policy H1.

*Scale of development*

37. Policy CS9 of the CS requires the development to be 'small-scale'. The term is not defined by the CS, nor is 'limited affordable housing' defined for the purposes of paragraph 149(f) of the Framework.
38. It may be reasonable to decide whether development is small-scale in absolute terms where sites or quantities of housing are obviously very small or large. However, the site and the amount of housing proposed in this case are such that the scale of the development must be considered in some context. Because CS Policy CS9 is concerned with development of land adjoining or closely related to existing built-up areas, it is appropriate to consider the scale of the development in relation to the adjoining settlement.
39. The appellant's planning witness calculates that the development would represent an increase in the number of dwellings in Chalfont St Giles by less than 2 percent. In this respect the development would be small-scale. Additionally, the development would be limited to one part of a single field. In the context of the extent of the built-up areas of the settlement, as shown on Map 2 in the NP, the proposal would constitute a small-scale addition. The proposal thus complies with CS Policy CS9 insofar as it would be small-scale. It also constitutes limited affordable housing for the purposes of paragraph 149(f) of the Framework.
40. The Council and the appellant have referred to decisions to support their stances in respect of this matter. However, those decisions are not directly comparable to this appeal proposal as some relate to schemes outside the Chiltern area and the Green Belt, and those from within the Chiltern area involved markedly lower housing numbers. In any case, I do not know the exact circumstances of any of the decisions referenced. Therefore, none lead me to alter my findings.

*Perpetuity*

41. The housing must remain as affordable housing in perpetuity for the proposal to comply with CS Policy CS9 and NP Policy H1. However, statutory rights

enshrined in legislation<sup>7</sup> enable occupiers of affordable rented or shared ownership units to acquire those properties in specific circumstances. Once acquired, the properties would no longer constitute affordable housing. It is undisputed that the statutory rights cannot be excluded by a legal contract and those rights would enable the affordable housing in this case to be acquired.

42. The term 'in perpetuity' is not defined in the development plan or the Framework. Both the Council and the appellant have made compelling submissions on how the term should be interpreted and how the policy should be applied. However, based on the above reasoning I conclude below that the proposal constitutes inappropriate development. Therefore, this specific matter is not determinative and does not need to be considered further in detail.
43. Notwithstanding this, the statutory rights have not resulted in significant losses of affordable housing in the parish so far, and it is logical that affordability issues will limit the capability of the occupiers to acquire the proposed housing. Additionally, the UU gives the appellant the right of first refusal on the sale of any units acquired by means of the statutory rights. As the appellant is a housing association with an existing presence in Chalfont St Giles, whose business is solely related to affordable housing provision and management, there is some prospect that it would buy back acquired housing. I am also mindful that the UU requires that the proceeds from the sale of the housing are used for affordable housing elsewhere in the Council's administrative area. These factors all indicate that affordable housing would be retained in the parish over a long period, even if the proposed housing would not be retained 'in perpetuity' in the strictest sense of the term.

*Conclusion on inappropriate development*

44. The proposal conflicts with CS Policy CS9 and NP Policy H1 as it has not been demonstrated that there is an established need for the proposed housing, the development would be no greater than required to meet current need, or the housing would be provided for people with a strong local connection. In addition, the proposal conflicts with LP Policy GB2 because it does not fall within one of the policy's exceptions to inappropriate development.
45. The development does not constitute limited affordable housing for local community needs under policies set out in the development plan. Therefore, the development does not fall within the exception to inappropriate development at paragraph 149(f) of the Framework. No other exceptions are relied upon by the appellant. The proposal thus constitutes inappropriate development in the Green Belt.

***Openness and purposes of the Green Belt***

46. Paragraph 137 of the Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence.
47. Having regard to the amount and volume of the development proposed, which includes mostly terraced and semi-detached 2 storey houses and a 2.5 storey apartment building, there would be substantial harm to the openness of the Green Belt spatially.

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<sup>7</sup> Part I of the Leasehold Reform Act 1967 and section 180 of the Housing and Regeneration Act 2008

48. The development would be evident in short distance views from the end of the existing High View highway, residential properties near to the site and a public right of way that extends away from the settlement. However, long distance views of the development would be filtered by vegetation within and at the site's boundaries and beside the public right of way. There would be limited visual harm to the openness of the Green Belt as a result.
49. The Green Belt's extent cannot be altered through the approval of a planning application. Furthermore, there can be no certainty that allowing this appeal would lead to alterations to the Green Belt's boundaries through any new local plan. The permanence of the Green Belt would be unaffected in these terms.
50. Nevertheless, the Council contends that the permanence of the Green Belt would be harmed as the field on which the development is proposed lacks permanent and defensible boundaries. A Green Belt assessment<sup>8</sup> of the field from October 2016 supports the Council's stance. However, the assessment was prepared primarily to support policy making. Additionally, the appellant's evidence indicates that the hedgerow on the outer edge of the site furthest from the settlement has some protection as an 'important hedgerow' for the purposes of The Hedgerow Regulations 1997. In my view, the permanence of the Green Belt would not be harmed by the development due to the presence of residential properties and hedgerows at the boundaries of the field, which provide the site and the proposal with a high degree of containment.
51. The appellant's Landscape and Visual Impact Assessment finds that the site does not contribute strongly to the purposes of the Green Belt identified at paragraph 138 of the Framework. Nevertheless, I consider that the site clearly forms part of a network of fields surrounding the settlement and contributes positively to the Green Belt's purpose in assisting in safeguarding the countryside from encroachment. Whilst there would be limited visual impacts and a high degree of containment of the development, and open space and landscaping on and adjacent to the site would be retained and is proposed, the development would still erode the site's undeveloped rural character and encroach into the countryside. Consequently, there would be moderate harm to the Green Belt purpose at paragraph 138(c) of the Framework.
52. The CS and NP describe Chalfont St Giles as a village. In addition, a Green Belt assessment from March 2016<sup>9</sup> identifies Chalfont St Peter and Gerrards Cross as a large built-up area, but not Chalfont St Giles. In this context, Chalfont St Giles is not a large built-up area or a town for the purpose of assessing harm to the Green Belt purposes at paragraph 138(a) and (b) of the Framework.
53. Nonetheless, even if the settlement was a large built-up area, sprawl would continue to be checked because of the site's containment. Additionally, if Chalfont St Giles was deemed to be a town, substantial parts of the settlement are currently closer to Chalfont St Peter than the scheme would be. Thus, the development would not affect the proximity of the settlements. It would also not result in the settlements being perceived as closer together from the public right of way, due to the distance between the settlements and intervening vegetation. I acknowledge that the Green Belt assessment from March 2016 identifies that the site is part of a land parcel which prevents sprawl and constitutes an essential gap between Chalfont St Giles and Chalfont St Peter.

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<sup>8</sup> Green Belt Assessment Part Two: Appendix 5, Volume 5, October 2016

<sup>9</sup> Buckinghamshire Green Belt Assessment: Annex Report 1C

However, it does not compel me to alter my findings as the appraised land parcel is substantially larger than, and does not discretely assess, the site.

54. Therefore, the proposal does not affect the Green Belt purposes identified at paragraph 138(a) and (b) of the Framework, those being to check the unrestricted sprawl of large built-up areas and prevent neighbouring towns from merging into one another. Furthermore, based on the evidence before me, there would be no harm to the purposes of the Green Belt identified at paragraph 138(d) and (e) of the Framework.
55. In conclusion, there would be harm to the openness of the Green Belt that would be substantial in spatial terms and limited in visual terms. Additionally, there would be moderate harm to the purpose of the Green Belt to assist in safeguarding the countryside from encroachment.

### **Other matters**

#### *Drainage and flooding*

56. Neither the Lead Local Flood Authority nor the Environment Agency have objected to the proposal on drainage or flooding grounds. The evidence indicates that there would be a sufficient separation distance between the drainage infrastructure and buildings. There is nothing indicating that land outside the control of the appellant would need to be accessed or relied upon for the arrangement to function or be maintained. Whilst further geotechnical investigations would be required due to potential chalk solution features within the site, there is a realistic prospect that the drainage scheme could be implemented. The UU ensures that unfettered access to the drainage systems would be gained when needed and that the systems would be managed and maintained in an adequate condition.
57. The proposal would not result in unacceptable drainage impacts or increase flood risk. In these respects, the proposal accords with CS Policy CS4. This seeks to ensure that development has long term sustainability in accordance with Table 1 of the CS, which sets out that regard should be had to drainage impacts and reducing flood risk. The proposal also accords with paragraphs 167 and 169 of the Framework, which aim to reduce flood risk and encourage the provision and ongoing maintenance of sustainable drainage systems.

#### *Ecology*

58. Shrubs Wood is a Biological Notification Site which is located near the site. However, there is no substantive evidence that it would be harmed in any respect.
59. The application was supported by a Preliminary Ecological Appraisal and several species surveys. The appraisal identifies that the site principally includes semi-improved grassland, but the important hedgerow is the most ecologically valuable feature. The hedgerow and the trees at the site's boundaries are to be retained and new landscaping is proposed including a pond. Improvements to grassland and the creation of an orchard are also proposed off-site.
60. The UU secures the delivery of the off-site landscaping as part of a biodiversity offsetting scheme which secures net gains of approximately 5 percent in habitat units and around 75 percent in hedgerow units. Neither the development plan nor the Framework set out that a specific level of biodiversity

net gain must be achieved and thus the proposal is acceptable in this respect. The UU also secures the implementation of an Ecological Mitigation and Enhancement Strategy that sets out construction controls and mitigation, compensation and enhancement measures for a range of wildlife.

61. The badger surveys indicate that there is an outlier sett in the vicinity of the site. However, the sett can remain in situ as it would be separated from the built-up part of the site by a 20m buffer between the important hedgerow and the proposed housing. If additional setts are discovered, there is a strong likelihood that they will be protected by the buffer. The new landscaping and orchard planting would increase the amount of foraging habitat. Hence, the proposal would not be harmful to badgers.
62. Aerial inspections of the trees within the site reveal low potential to support roosting bats, whilst transect surveys identified that most of the foraging and community bat activity takes place along the site's boundaries. The new landscaping would also increase foraging and commuting opportunities. New roosting features such as bat boxes are also proposed. For these reasons, and due to the retention of the important hedgerow and the presence of the buffer between it and the housing, the proposal would not harm bats.
63. In respect of great crested newts (GCN), negative environmental DNA (eDNA) test results were received for water bodies surveyed in the vicinity of the site. This indicates an absence of GCN in those water bodies. However, local residents reported the presence of GCN in water bodies in the vicinity of the site at 2 High View, Charwood and Briland. The Buckinghamshire and Milton Keynes Environmental Records Centre has a record of GCN at the latter property. For various reasons, including availability issues for the occupiers, the Coronavirus pandemic and access being denied, the appellant's ecological consultants were unable to undertake eDNA testing at those 3 properties.
64. One of the negative eDNA results is from a water body near to Charwood and Briland. Moreover, those properties are more than 100 metres from the built-up part of the development. With reference to published research, the main parties agree that the majority of GCN in their terrestrial phase are caught within 50 metres of breeding ponds. Therefore, the proposal is unlikely to harm any GCN at Charwood, Briland or properties further from the site.
65. Given that 2 High View would be within 50 metres of the site, any GCN from the water body there could be harmed by the development. However, landscaping is proposed adjacent to the boundary with No 2, which would separate the water body from construction work associated with the scheme. Avoidance measures are proposed which would minimise construction impacts. Further, the landscaping would connect to the important hedgerow, which is valuable terrestrial habitat for GCN, and be contiguous with the pond and thus breeding habitat. For these reasons the potential harm to GCN is limited and, as attempts have been made to survey the water body at No 2, this should not weigh against the scheme.
66. The appellant's drainage expert explained that maintenance and repair of the drainage system could be undertaken without significant impacts on the pond. The ecologists for the main parties have no concerns regarding this matter. I am satisfied that arrangements could be made to prevent harm to GCN or other species that might use the pond if works to the drainage system were

required in the future. Moreover, firm evidence has not been provided which suggests that other species would be harmed, protected or otherwise.

67. The proposal would not have a harmful effect on biodiversity. It accords with CS Policy CS24, which requires that biodiversity is conserved and enhanced. It also accords with paragraphs 8, 174 and 180 of the Framework, which set out that the planning system should protect, conserve and enhance the natural environment and minimise impacts on and provide net gains for biodiversity. In addition, there is no conflict with Circular 06/2005<sup>10</sup>, which provides guidance on laws relating to planning and nature conservation.

#### *Highways and accessibility*

68. High View is a cul-de-sac featuring a turning head with footways around it. The site is accessed via carriageway and footways that extend beyond the turning head. Access to existing properties is gained from the turning head. However, drawings show that egress from those properties could be achieved in a forward gear and that there would be adequate visibility splays. Moreover, as low boundary walls are beside the footway beyond the turning head, there would be good intervisibility between drivers and pedestrians.
69. Parking provision exceeds the standards set out by LP Policy TR16. Modelling has been undertaken which indicates that there would not be unacceptable impacts on the local highway network. The Highway Authority has not objected to the appellant's highway evidence and no comparable evidence to the contrary has been provided. A condition would ensure that the construction process would not result in significant highway impacts. The proposal would not have a harmful effect on highway safety.
70. The centre of Chalfont St Giles is designated as a Local Centre by the LP. Many of the requirements for daily life can be met by the amenities there. Pedestrian access from the village centre to the site is achievable via a few routes. The route via London Road and Stylecroft Road is less than one mile, sections of it have street lighting and the footway widths are adequate. Stylecroft Road is steep, but other roads on the route have gentler inclines. Improvements to pedestrian crossing points and the provision and maintenance of rest features on Stylecroft Road are secured by the UU. As such, there is a realistic prospect of some residents walking to the village centre.
71. Further, there is a bus stop on London Road served by buses that travel to the village centre as well as larger settlements. The bus routes operate Monday to Saturday from morning to evening and thus many residents could rely on buses for their journeys. The UU also requires contributions to be paid to the Council for use in upgrading the bus stop and providing dial-a-ride services. A travel plan is also secured, which would encourage the residents to choose sustainable modes of transport. Hence, there would be realistic alternatives to private motor vehicles for the occupiers of the development.

#### *Further matters*

72. The site is approximately 240 metres from the boundary of the Chiltern Hills Area of Outstanding Natural Beauty (AONB). Given this separation distance and

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<sup>10</sup> Office of the Deputy Prime Minister Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impacts within the Planning System

the presence of intervening vegetation, the proposal would not harm the AONB or its setting.

73. High View and Stylecroft Road feature properties that are predominantly detached, with some semi-detached dwellings evident. However, the size and design of the housing in the vicinity otherwise varies. In addition, the scheme would be relatively self-contained, which provides an opportunity for some variation between its design and the surrounding housing. Notwithstanding the impacts on the countryside already identified in respect of the Green Belt, the development would not adversely affect the character or appearance of the area or the landscape. A few trees are proposed to be removed from the site; however, none are of significant value and the impacts from the loss of the trees would be offset by the new landscaping.
74. The Council sets out that the proposed properties satisfy its relevant housing standards. There would be sufficient distance between the existing and proposed properties to ensure satisfactory living conditions for the occupiers in terms of outlook, privacy, daylight and sunlight. Objective evidence has not been presented which indicates that there would be unacceptable noise or disturbance impacts from the development or associated vehicle movements.
75. Concerns have been raised that the development would lead to increased pressure on local service provision. The Buckinghamshire Clinical Commissioning Group has not provided substantive evidence that contributions to healthcare services are necessary and spare capacity has been reported at local schools. There is no compelling evidence that the development would place undue pressure on local services.
76. Interested parties are also concerned that allowing the appeal would set a precedent for similar development in and around the settlement and that a further application for housing on the rest of the field would be submitted. However, each application must be considered on its own merits and generalised concerns of this nature do not indicate against the scheme.
77. In addition to the planning obligations already identified, the UU secures management measures for the communal and open spaces within the site. I am satisfied that these and the other obligations in the UU accord with the statutory tests contained in Regulation 122 of the CIL Regulations<sup>11</sup> and the tests set out at paragraph 57 of the Framework.
78. A Written Ministerial Statement (WMS) from 17 December 2015 identifies that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, the Framework has not subsequently incorporated the provisions of the WMS. In addition, similar guidance in the PPG has been removed.
79. The Council has referenced a judgement<sup>12</sup> to support its view that if the Government had changed its Green Belt policy, there would have been a clear statement setting that out. However, the judgement focused on whether changes to policy could be inferred from the replacement of Planning Policy Statement 2 with the first version of the Framework. As such, it is not directly relevant to interpreting the status of the WMS. Decisions have been referred to which show that different stances have been taken to ascribing weight to the

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<sup>11</sup> The Community Infrastructure Levy Regulations 2010

<sup>12</sup> Redhill Aerodrome Limited v SSCLG & Others [2014] EWHC 2476 (Admin); [2014] EWCA Civ 1386

WMS; but the extent to which the weight of the WMS was assessed or disputed in those cases is unclear, and several decisions pre-date the removal of the guidance in the PPG. The WMS does not state unmet need is incapable of clearly outweighing harm to Green Belt. Moreover, in my view, the removal of the PPG guidance clearly indicates that limited weight should be attached to the WMS. I have taken this into account below.

***Other considerations and whether very special circumstances exist***

80. Paragraph 148 of the Framework explains that very special circumstances to justify development in the Green Belt will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
81. The proposed development would make a significant contribution to housing supply generally and in terms of affordable housing specifically, in both the parish and the wider Chiltern area. Significantly increasing housing supply is an objective of the development plan and the Framework. Having regard to the affordable housing obligations in the UU, and the existing and seemingly future delivery, supply and affordability issues for housing in Chalfont St Giles and the wider Chiltern area, including the Council's 5 year housing land supply shortfall, the benefits of the housing provision attract substantial weight in favour of the proposal.
82. In addition, the proposed housing mix includes units for those with restricted mobility, and the occupiers would contribute to the vitality and vibrancy of the local community. Having regard to the amount of housing proposed, these are benefits of limited weight. There would also be limited economic benefits from the construction of the housing and the occupiers spending on services and facilities in the vicinity of the site. The pedestrian accessibility improvements and rest features, bus stop improvements and dial-a-ride service would benefit some of the existing residents in the area and attract limited weight too. Considering the amounts proposed, the biodiversity net gain and ecological enhancements also constitute benefits of limited weight.
83. Taken together, I consider that there are other considerations in this case that weigh substantially in favour of the proposal. However, the proposal would be inappropriate development in the Green Belt which is, by definition, harmful. There would also be substantial harm spatially and limited harm visually to the openness of the Green Belt. In addition, the proposal would result in moderate harm to the Green Belt's purpose to assist in safeguarding the countryside from encroachment. Paragraph 148 of the Framework explains that any harm to the Green Belt attracts substantial weight.
84. Overall, the other considerations do not clearly outweigh the harm identified. Therefore, the very special circumstances necessary to justify development in the Green Belt do not exist.
85. Furthermore, whilst the presumption in favour of sustainable development at paragraph 11(d) of the Framework is applicable because of the Council's housing supply position, the policies in the Framework that protect the Green Belt provide clear reasons for refusing the development.
86. The proposal's conflict with CS Policy CS9 and NP Policy H1 leads me to conclude that the proposal is contrary to the development plan taken as a

whole. The material considerations identified do not outweigh the proposal's conflict with the development plan.

**Conclusion**

87. For the above reasons, the appeal is dismissed.

*Mark Philpott*

INSPECTOR

Richborough Estates

## **APPEARANCES at the Inquiry**

### FOR THE APPELLANT:

|                  |                                       |
|------------------|---------------------------------------|
| Rupert Warren QC | instructed by Paradigm Housing Group  |
| Martyn Jones     | Paradigm Housing Group                |
| Chris Broughton  | arc4                                  |
| Andy Meader      | AM2 Planning                          |
| Alex Bennett     | M-EC Consulting Development Engineers |
| Graham Davison   | Focus Environmental Consultants       |
| Michael Ruddock  | Pegasus Group                         |

### FOR THE LOCAL PLANNING AUTHORITY:

|                       |                                     |
|-----------------------|-------------------------------------|
| Ashley Bowes, Counsel | instructed by the Council           |
| Kerry Parr            | AECOM                               |
| Graham Mansfield      | Principal Planning Officer          |
| Jordane Bates         | Senior Sustainable Drainage Officer |
| Mike Sharp            | Consultant Ecology Advisor          |
| Teresa Coppock        | Solicitor                           |
| Ryan Kohli            | Cornerstone Barristers              |

### INTERESTED PARTIES:

|                  |                                                |                 |
|------------------|------------------------------------------------|-----------------|
| Grant Kirkby     | Councillor, Chalfont St Giles Parish Council   |                 |
| Peter Lerner     | on behalf of Protect St Giles Green Belt Group |                 |
| David Beer       | Peter Crown                                    | James Dillon    |
| Paul Killingback | Jon Levart                                     | Ciaran Nagle    |
| Mary Philips     | Janet Philpott                                 | Debbie Reid     |
| Malcolm Smith    | Alexia Sudbury                                 | Neal Sudbury    |
| Cetin Suleyman   | Russell White                                  | Lawrence Wolman |

## **DOCUMENTS submitted during the Inquiry**

1. Chalfont St Giles Parish Council appeal representation, 20 September 2021
2. Opening statement on behalf of the appellant
3. Opening statement on behalf of the Council
4. Qualifications for appellant appearances
5. Qualifications for Council appearances
6. Statement from Russell White, 20 September 2021
7. Schedule of amended conditions, 22 September 2021
8. Draft unilateral undertaking
9. Core documents list: Version 5
10. Buckinghamshire Green Belt Assessment - Report: Methodology and Assessment of General Areas, 7 March 2016
11. List of matters/route for Inspector's site visit, email from Peter Lerner dated 23 September 2021
12. Appellant's response to the Council's costs application
13. Confirmation of appellant's agreement to pre-commencement conditions, email from Michael Ruddock dated 23 September 2021
14. Closing statement on behalf of the Council
15. Court of Appeal judgement: Redhill Aerodrome Limited v SSCLG & Others [2014] EWHC 2476 (Admin); [2014] EWCA Civ 1386
16. Closing statement of behalf of the appellant
17. Confirmation that the Council does not wish to comment on the appellant's response to the costs application, email from Graham Mansfield dated 24 September 2021
18. Unilateral Undertaking dated 28 September 2021