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## Appeal Decision

Inquiry Held on 27-28 November and 3-5 December 2019

Site visit made on 4 December 2019

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> January 2020

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**Appeal Ref: APP/B1930/W/19/3235642**

**Land to the rear of Burston Garden Centre, North Orbital Road, Chiswell Green, St Albans, AL2 2DS**

- 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 Castleoak Care Partnerships Ltd against the decision of St Albans City & District Council.
  - The application Ref 5/18/1324, dated 14 May 2018, was refused by notice dated 20 March 2019.
  - The development proposed is the demolition of all existing horticultural structures and redevelopment of the site to provide a new retirement community comprising a 64 bedroom care home, 125 assisted living bungalows and apartments, a community clubhouse together with associated access and pedestrian/bridleway improvements, landscaping, amenity space and car parking.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A revised landscaping master plan (INQ9) was submitted during the course of the Inquiry. This depicts the removal of an access track to the eastern boundary of the site and instead further landscaping is proposed along the site edge with the public bridleway.
3. Parties were given an opportunity to comment on this and expressed no concern at this amendment. I consider that the change is minor, and I am satisfied that no party would be prejudiced by my taking the amended plan into account. Accordingly, the Inquiry went on to consider the revised landscaping proposals.
4. A planning obligation was submitted in draft form (INQ21), discussed at the Inquiry and subsequently finalised after the Inquiry. I have taken it into account.

### Main Issues

5. The appellant accepts that the proposal would constitute inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework), and that openness would be harmed.

6. In light of the above, the main issues are:
- i) The extent to which the development would harm the openness of the Green Belt and/or conflict with its purposes;
  - ii) The effect of the proposal on the character and appearance of the area;
  - iii) The effect of the proposal on the significance of the grade II\* listed Burston Manor and grade II listed outbuildings, as derived from their setting; and,
  - iv) 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 necessary to justify the development.

## **Background**

### *Site Description*

7. The appeal site forms the eastern portion of Burston Garden Centre (BGC) of around 3.8ha in size. It is currently unused and comprises open grassland, sheds, polytunnels, glasshouses and planting beds which were formerly used for rose propagation. The site is accessed from the North Orbital Road (A405) via an existing private access track within BGC.
8. Abutting the site to the north is Burston Manor House, a grade II\* listed building originally dating from the 12<sup>th</sup> Century with grade II listed 17<sup>th</sup> Century outbuildings. A close boarded fence forms the perimeter boundary to the east, along a public bridleway. How Wood and How Wood Village lies beyond. To the south the site has a heras fence separating it from Birchwood. Birchwood Bungalow is located adjacent to the south eastern corner of the site. To the west is the remainder of the BGC site with a number of large glasshouses.
9. The site is located in the Green Belt and is designated as part of a Landscape Development Area and also as an area of archaeological significance, as set out in the development plan.

### *Appeal Proposals*

10. Permission is sought to develop the site as a retirement village with 'extra care' housing for older and retired people together with a 64-bed care home. The housing would comprise 45 care bungalows and 80 1, 2 & 3 bed apartments. There would be a central village green and clubhouse with bar/café, restaurant, library and other facilities.
11. It was a matter of common ground that the proposed development falls wholly within a C2 use class. Although local objections were made in respect of affordability, the Council and appellant considered that no affordable housing contributions should be sought as there was no policy basis to require this for a C2 use.
12. Access would be via the existing track, which would be widened along its length through the removal of part of the existing glasshouses at BGC. This would create a tree-lined avenue into the site. The newly created 'Burston Lane' would form a main central access into the site itself, roughly following the line of a former tree lined field boundary at Burston Manor.

13. A number of secondary routes would also be created as well as pedestrian routes through the site, connecting with the existing bridleway alongside How Wood. The proposal would also include the creation of a new bridleway along the south of the site. The application also includes a proposal for improvements to the access junction with the A405 by way of a signalised junction and signalised pedestrian crossing points.
14. The assisted living apartments would be divided between 3 blocks which are 3-storeys in height with single storey entrance pavilion link buildings and canopied walkways. The clubhouse would face out across the village green area, while the assisted living blocks would be served by parking courtyards and courtyard gardens.
15. With the exception of a detached 'gatehouse' within the site, the bungalows would be semi detached and form blocks with parking courtyards to the front and private gardens and patios to the rear. The care home would be positioned to the north eastern 'nib' of the site and would be 2-storey with a central main entrance and rear wings around a central courtyard area.
16. The landscape strategy for the site would include planting of trees and hedges, both along the boundary edges and within the site. Communal gardens would serve the apartments, and the bungalows to the north of the site would have communal edible gardens and a fruit tree walkway between the groupings. The care home would incorporate private sensory and water gardens.
17. The general palette of materials would be red brick with tile hanging and soldier course detailing, pudding stone walling, and dark facing brick and weatherboarding. Roofs would use clay tiles and windows would be dark coated metal.

### *Policy Context*

18. The development plan for the purposes of the appeal comprises the saved policies from the St Albans Local Plan 1994 (LP). The St Albans City & District Local Plan Publication Draft (emerging LP) was submitted for examination and this is due to begin in January 2020. This seeks to allocate broad locations for development, including for C2 units, and includes a review of the Green Belt as part of the identification of these. The appeal site is not allocated in the emerging LP.
19. The site also falls within the St Stephen Neighbourhood Plan area which was designated in 2014. It was explained by Mr Parry that a draft Neighbourhood Plan (emerging NP) has been developed (INQ7) following early public engagement. It is anticipated that this will be subject to public consultation in 2020. The BGC site as a whole is included in the emerging NP as an allocation for a retirement village and for the removal from the Green Belt, although both the appellant and Council expressed their concerns in terms of whether Green Belt boundaries could be altered by a NP.
20. Both the emerging LP and the emerging NP have yet to be formally examined and in accordance with paragraph 48 of the Framework, can only attract limited weight. I come back to the issue of the emerging plans later in my decision but it is notable is that neither the Council or the appellant seek to rely on these in making their cases and give these documents limited or no weight.

21. The Framework is also a material consideration. It was common ground between parties that St Albans can only currently demonstrate a 2.2 year deliverable supply of housing and that, in accordance with national policy, the C2 specialist housing would go towards meeting part of the overall housing need.

## **Reasons**

### *Green Belt Openness and Purposes*

#### *Openness*

22. LP Policy 1 seeks to restrict development in the Green Belt. It sets out a number of exemptions to this or allows development in very special circumstances. It does not, however, fully align with the Green Belt policies of the Framework as the exemptions are more restrictive than those set out in paragraph 145.
23. The Government attaches great importance to the Green Belt. The fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permeance. Openness has both a visual and spatial element.
24. It is common ground that the site should not be regarded as previously developed land and as such the proposals would constitute inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and substantial weight should be accorded to that harm. Such development should not be approved except in very special circumstances whereby inappropriateness and any other harm is clearly outweighed by other considerations.
25. There was debate at the Inquiry in respect of the quality of the site. However, I consider that the existing structures including the glasshouses, polytunnels and other structures associated with the sites horticultural use should not be seen as harmful to the purposes or characteristics of the Green Belt. Put simply, they are structures which are common in rural areas and, crucially, are not seen as inappropriate in Green Belt policy terms.
26. The parties disagree as to the extent of the effect of openness, although the appellant accepted that there will be some impact upon this. In considering openness against the baseline outlined above, the proposed development would introduce a substantial amount of built form spread across the site at 1, 2 and 3 storeys in height. The scheme would thus far exceed the height, volume and site coverage of the existing structures. The development would therefore result in a substantial loss of openness in spatial terms.
27. In visual terms, the appellants landscape witness considered the effects to be very limited due to the visual containment that exists around the site as well as the mitigation and landscaping proposals through planting and public access within the site.
28. The Landscape and Visual Impact Assessment (INQ12) identifies that moderate adverse effects would be experienced from view points taken from the bridleway to the eastern edge of the site. Due to the location of the site behind Burston Manor and the BGC and its relative containment by How Wood and Birchwood, I agree that the new buildings would have limited zones of visibility

from outside of the site. Such visibility would be largely confined to short or medium range views from the bridleway. However, the loss of openness would be clearly perceived by users of the public right of way.

29. In addition, the scale of the built development and associated parking areas and reduction in openness would also be very apparent to the many residents, staff and visitors to the development. Moreover, in introducing a new public access through the site and along the perimeter of Birchwood through the development of a new public bridleway, I consider that the mitigation itself would increase the visual effects experienced from the loss of openness.
30. Taking all of the above together, I consider that the spatial and visual harm to openness would therefore constitute significant harm to the Green Belt in addition to inappropriateness.

#### *Purposes*

31. As defined by paragraph 134 of the Framework, the Green Belt serves 5 purposes (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; (c) to assist in safeguarding the countryside from encroachment; (d) to preserve the setting and spatial character of historic towns; and (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
32. Chiswell Green is located to the north west of the North Orbital Road, with How Wood Village to the south. The appeal site address references Chiswell Green, but the BGC site as a whole does have a degree of separation from this settlement as the site is below the North Orbital Road.
33. The appeal site would abut How Wood and would effectively enclose the woodland by development. How Wood itself is not of a significant depth nor is it so dense as to provide a definitive edge to How Wood Village in this location. As I saw on site, which was in winter when the trees are not in leaf, filtered views of the rear of properties along Walnut Close and Spruce Way were visible through the woods. The development would therefore be visible from these properties, although there would be larger amounts of landscaping included within the site and along the boundary.
34. There would not be direct coalescence as a result of the proposal between How Wood Village and Chiswell Green. However, it would form a perceptible adjunct to How Wood Village and would diminish the gap and erode the open nature of the Green Belt in this location between these villages. Accordingly, there would be a degree of sprawl and merger of these and harm to the perception of the settlements.
35. By virtue of its open nature the site contributes to the characteristic openness of the Green Belt. In my view, the proposed development could therefore do little else but to encroach on the countryside. As established above, the buildings and polytunnels which form part of the horticultural use of the site are not inappropriate in the Green Belt. These structures are also not comparable to that being proposed. There can be no doubt that the development would have an urbanising effect in this location that cannot be said to safeguard from encroachment.

36. While the appellant considers that the development would not harm any of the purposes of the Green Belt, I consider that there is a clear conflict with Green Belt purposes in terms of purposes (a) (b) and (c) above.
37. The appellant also held that there is a mismatch between the evidence of Mr Greaves who considered that 3 of the Green Belt purposes would be breached (a-c), whereas the Council in their Committee Report reference only a single issue in this regard (c). In combination effects with a separate development of a hotel at Copsewood are also referenced by the Council and Mr Greaves.
38. The Committee report did not go specifically into the purposes of the Green Belt to any great degree. The issue of sprawl and merger and the urban form is, however, referenced in the 1<sup>st</sup> reason for refusal. I note that the hotel scheme has now lapsed, but in any case, I have considered the scheme on its own merits and in the light of the evidence.

*Conclusion – Openness and Purposes*

39. The development would therefore result in a substantial loss of openness and would conflict with the purposes of the Green Belt. The development would not accord with the Framework nor LP Policy 1. I attach substantial weight to this conflict and the harm arising to the Green Belt and its purposes by virtue of the development's inappropriateness and the effect of openness.
40. That harm will need to be outweighed by other considerations, if very special circumstances are demonstrated and I will return to that question, in the context of the overall planning balance, later in my decision.

*Character and Appearance*

41. As stated above, the site contains a number of buildings and structures in connection with BGC, albeit it is currently derelict. The buildings are generally modest in their scale but are utilitarian in their appearance and are poor quality and dilapidated. The site also has an untidy and unkempt appearance.
42. The remainder of the BGC site has substantial coverage with glasshouses which have a large footprint extending across the site but are of a reasonable height and are of a lightweight design with their framing and glazing. The main garden centre buildings, barns and stores are of a large scale in terms of their massing and height. Other expanses of hardstanding and parking are also found at the site. The buildings within the appeal site have a visual association with the wider part of BGC, and are positioned adjacent to this, with the eastern part of the site being open grassland or formed of former planting beds. The fencing to the east and southern boundaries contains the site from the woodland areas beyond.
43. In the wider area, detached properties to the north of the appeal site are set in spacious grounds. In contrast the urban form of How Wood Village and Chiswell Green is more built up with rows of detached and semi-detached houses. This is discernible from the aerial photograph of the wider area (INQ10).
44. The appeal site is not accessible to the general public nor to visitors to BGC and, as expressed above, is visually contained. Care has been taken with the scheme in terms of the detailed design of the proposed buildings, taking their reference from the local vernacular and palette of materials. As explained by

the appellant landscape witness and scheme architect, the concept behind the scheme and its overall layout and design is to provide 'aging in place' with different types of C2 accommodation within an enabling environment. The overall site layout is of a formal nature, with clear, legible and logical areas and has been designed as such due to the nature of the C2 use. The landscaping proposals are also extensive and form a fundamental part of the overall design concept.

45. The formality of the layout would not be out of place with the general layout of the built form in the wider area. In some regard, the footprint of the linked apartment blocks and the care home buildings would not be out of place with the large footprints of the buildings at the BGC site. They would, however, be markedly different in their general scale, massing and form to the BGC buildings. There would also be marked differences between the scale and density of properties in How Wood Village and to properties to the north of the appeal site.
46. In combination with the bungalows and parking, the built elements of the proposed development would take up a large proportion of the site. This would give a distinctly urban form which would contrast with both the character and appearance of BGC and the general built form of the dwellings of the surrounding areas.
47. The close boarded fence along the eastern boundary of the site with the bridleway is a visually discordant feature which would be removed by the proposed development. As per the amended landscape masterplan this area and the removal of the access track would give way to additional landscape planting along its periphery.
48. However, as stated above, the development would be seen behind properties at Walnut Close and Spruce Way and would effectively enclose How Wood. In particular, the proposed care home would be built on land which is currently open and due to its scale, it would have a large and dominating effect, in spite of the additional peripheral landscaping here.
49. Overall, despite the visual containment at the site, and the positive aspects of the development relating to legibility, design and landscaping, the resultant effect would be of an urbanised site which would be out of step with its wider surroundings. This would therefore give rise to a moderately harmful impact on the character and appearance of the area in the vicinity of the site. This would be in conflict with LP Policies 69 and 70 which require high standards of design, having regard to setting and character, and massing and siting. These LP policy objectives are consistent with those of the Framework.

#### *Designated Heritage Assets*

50. LP Policy 86 reflects the statutory obligations<sup>1</sup> to have special regard to the desirability of preserving a listed building or its setting or any features of architectural or historic interest that it possesses. In a similar vein, the Framework gives great weight to the conservation of designated heritage assets, noting that the more important the asset, the greater the weight should be. This is irrespective of the level of harm. Any harm should also require clear and convincing justification.

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<sup>1</sup> As set out in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

51. It is common ground between parties that the development will cause less than substantial harm to the grade II\* listed Burston Manor and the grade II listed outbuildings and that this harm should be given great weight. In this regard, for the purposes of my decision I am simply required to weigh that harm against other considerations, including any public benefits, similar to Green Belt policy.
52. The issue debated at the Inquiry is where the harm falls in the 'spectrum' of less than substantial harm, as Planning Practice Guidance<sup>2</sup> (PPG) makes clear that within each category of harm, the extent of the harm may vary and should be clearly articulated. The appellant assigns a minor level of less than substantial harm and the Council a moderate level.
53. Detailed analysis of the significance of Burston Manor and the outbuildings is provided with the Heritage Statement and the parties' proofs. Again, this was common ground between parties and I have no reason to disagree with their assessments. As such there is no need to rehearse this in detail here.
54. In terms of setting, Burston Manor and the outbuildings are set in private, landscaped gardens which provide screening and enclosure, both from when looking out from the grounds, and when looking towards the Manor itself from the appeal site and bridleway. Notably, there is also a moat within the gardens, likely to be associated with the manorial seat. There is also archaeological significance in light of the moat and records relating to a shrunken settlement.
55. Today, in spite of the boundary screening within the grounds, the Burston Manor grouping does have a relationship with its surroundings thus this forms its wider, or as described by parties, its 'secondary' setting. The position of both parties in respect of setting has, however, altered since the analysis of the original application; Mr Greaves does not agree that the appeal site makes an overall negative contribution to significance, whereas the Council's analysis (including that of their own Conservation Officer) did consider that the existing contribution of the site was negative. Similarly, the evidence presented by Mr Smith for the appellant in terms of the contribution of the appeal site to setting contrasted with the appellants own Heritage Statement which states that "*the remnant unmanaged grassland on the eastern reaches of the site represents a last vestige of the asset's historic pastoral landscape setting.*"
56. Originally Burston Manor would have stood in a relatively isolated location in the open landscape, as depicted on the 1766 Map. Birchwood and How Wood appear on the 1805 OS Map, although the wider landscape remained open. This remained the status quo until after the 1930's where significant development was carried out, particularly in the second half of the 20<sup>th</sup> Century with the development of How Wood Village and Chiswell Green. The BGC site was mainly developed during the 1970's and 1980's (INQ24).
57. There can be no doubt that the setting of the heritage assets has been greatly changed and urbanised during the 20<sup>th</sup> Century and that this has had an adverse effect on the Burston Manor grouping. The BGC site has distinctly urban elements including, for example, the large-scale retail and other buildings, lighting and car parking. The general intensity of the use at BGC also has an impact and gives rise to a number of comings and goings and

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<sup>2</sup> 18a-018-20190723



operational effects such as noise from the access track running adjacent to the western boundary of Burston Manor. The close-boarded fencing along the eastern boundary adjacent to the bridleway is also an urban feature which detracts from the wider landscape setting and provides a barrier between the site, Burston Manor and How Wood.

58. However, the appeal site with its low level polytunnels, along with the planting beds and grasslands to the eastern and southern parts helps maintain a semblance of the open and agricultural character, albeit diminished. As historic early 19<sup>th</sup> Century woodland groups Birchwood and How Wood form a positive part of the historic evolution of the wider environs of Burston Manor. Today, the appeal site does allow for the appreciation of these woodlands from the grounds of Burston Manor and vice-versa. This helps to maintain a sense of the historic relationship here, particularly with How Wood due to the open grasslands to the north-eastern nib of the site. I saw that this relationship is more visible in the winter when the deciduous boundary trees within the grounds of Burston Manor are not in leaf.
59. In this regard, I consider that the appeal site has a more limited negative impact upon setting than the remainder of the BGC site. Furthermore, while it is unkempt and not in any way pristine, I consider that it does represent the last legible remnant of its historic landscape setting.
60. In considering whether additional change would further detract from, or enhance the significance of the assets, there would be a significant change and the Burston Manor grouping would effectively be contained by urban development. I agree with the Council that this would amount to the severing of the last tangible link between the assets and their original setting. The historic relationship between the Burston Manor grouping and How Wood and Birchwood would be all but lost.
61. There would be significant landscaping and planting at the site, but as I have stated above, built elements of the proposed development would take up a large proportion of the site and thus would dominate in this regard. Effort has been made to restrict the building heights across the appeal site including locating the bungalows to the south of the boundary with Burston Manor. However, due to the amount of development at the site, there would be limited separation between the built form and the boundaries of Burston Manor.
62. The proposed care home in particular would be of a significant built scale and massing in the open north eastern nib of the site. The s106 agreement would secure offsite planting, including between the eastern boundary of Burston Manor and would have a significant screening effect of the care home, but this would do little to overcome the urbanisation. Instead it would further serve to divorce the assets from their wider surroundings and would add to the containment of the heritage assets.
63. Additional verified views were submitted from the upper floors of Burston Manor as part of Mr Judd's Proof of Evidence which are said to demonstrate the current level of screening which would be bolstered in the short and long term by landscaping. However, these views were taken when the trees were in leaf. While there are some evergreen trees providing screening, my site visit in the winter months revealed a much greater level of visibility from Burston Manor, from both within the grounds and as viewed from the upper floors. The severing effect I have identified from the proposed development would be more

perceptible and while the additional landscaping would aid this, the effects would still be experienced from the assets.

64. The development would involve the widening of the access road to the western boundary of Burston Manor and the removal of some bays of the BGC greenhouses to facilitate this. The barns and stores would also be removed and there would be a comprehensive lighting strategy across the site. These would help to address some of the negative effects that BGC and the appeal site have on the setting of the buildings. Nevertheless, in light of the nature and scale of the development proposed, these would not address my concerns in any meaningful way.
65. I am mindful that grade II\* listed buildings represent the top 7% of England's most significant designated heritage assets. In combination with the grade II listed building and the moat and archaeological potential, the development would be firmly within the realms of 'less than substantial harm'. I am of the clear view that this would be to a moderate degree when applying the spectrum or scale put to me at the Inquiry, as opposed to the limited harm attested by the appellant. The lack of comment from Historic England does not alter my conclusions in respect of the harm I have found.
66. Overall the development would cause harm to the significance of the grade II\* and grade II listed buildings forming the Burston Manor group. As a result, the development would conflict with LP Policy 86. In accordance with the Framework and the statutory obligations imposed, I give great weight to that harm. I shall weigh this against the public benefits later in my decision.

#### *Other Considerations*

67. The appellant identifies a range of other considerations that are said to be in favour of the proposed development. Similar to the debate at the Inquiry as to the precise level of harm ascribed by the parties, the level of weight to be assigned to the benefits is also disputed.

#### *General and C2 housing need*

68. Particular emphasis was placed on the need to deliver housing, including the specialist accommodation being proposed. The agreed position on housing supply, at 2.2 years, is well below the requisite five-year supply and the proposed development would contribute towards this housing need and would deliver a range of specialist housing options for older people. I give this substantial weight.
69. The parties were unable to agree the precise extent of need for older people's accommodation in the area with the appellant citing a much greater need than the Council identifies. However, at the Inquiry parties submitted a Statement of Common Ground setting out the different projections of need for extra care and care homes (INQ18). This formed the basis of the discussion. A considerable amount of evidence was presented on this topic and the figures supplied for extra care units and care home beds were vastly different and there were issues around the data time periods. Debate also ensued regarding pipeline provision, which the Council had calculated based on past trends and future Local Plan provision.
70. The proper forum for determining the precise position is as part of the development plan process and having considered the submissions made, it is

not necessary for me to reach a precise conclusion on the need and supply of this type of housing. This is because, even using the Council's more modest figures, there is an immediate unmet and growing need which would not be met by the emerging LP in the short term (as evidenced by the trajectories set out in INQ23). Windfall provision is also not likely to address this. I also note the empirical evidence presented by the Parish Council, local residents associations and elected Members in terms of the need.

71. A lack of affordable care provision was raised by 'Affordable Care for St Albans' and while I don't doubt that there is also such a need, there is no policy requirement for affordable housing C2 provision.
72. In light of the current shortfall in C2 accommodation, there can be no doubt that the development could make a very significant contribution towards meeting such local needs and based on the evidence supplied, this would be likely to be achieved within the next 5 years. Related to this point, the occupation of such housing by local people would be likely to free up existing housing stock, thereby assisting the wider market. I thus consider the benefits relating to general and C2 housing need to be very significant which weighs substantially in favour of the development.

*Alternative sites*

73. The appellant also held that there are no alternative sites which could accommodate the appeal proposals, although this was challenged by the Council on two points relating to availability and disaggregation.
74. In terms of the latter, Mr Appleton gave evidence on the evolving nature of housing for older people and the care village concept, with its associated demonstrable benefits. A revised report (the Carterwood Report) was submitted as part of Mr Belcher's evidence which revised the methodology to assess sites between 1ha-4ha (the appeal site being around 3.8ha in size) in order to address the Council's earlier concerns that the original study only looked at sites 2.4ha and above.
75. The question here is one of how much weight can be apportioned to a lack of alternative sites and whether need can be met in a disaggregated way. It was clear that smaller extra care units and standalone nursing homes can be provided on smaller sites. That said, the revised study goes down to 1ha, or as the appellant cited 25% of the size necessary to deliver the appeal site. In that regard, I consider the Carterwood Report to be robust for the purposes of assessing alternatives, including disaggregation.
76. I do, however, share the Council's concerns regarding the application of the criteria of sites which were assessed on the basis of their availability, suitability and achievability. None of the sites assessed were identified as being available as they were not being actively marketed. Mr Belcher explained that in assessing availability research had taken place in terms of property agents, websites and physical inspections, but in my view, this is a fundamental flaw of what was otherwise a robust exercise.
77. Only three sites were found to be suitable and achievable and as such it would not have been an onerous task to approach the landowners to ascertain any intent. I also accept the Council's point that the appeal site was also not actively marketed and thus would have failed according to this methodology.

78. Of these sites I acknowledge that they were all smaller than the appeal site. Two of the sites were owned by the County Council and while they were smaller than the appeal site, these were located adjacent to each other. It would have been a simple exercise to approach the County Council regarding these sites, and also consider whether they could be combined. I note that the other site was envisaged for retail use in the emerging LP. Again, an approach could have been made to the owner and evidence gathered in terms of whether it would be suitable for an alternative use by the planning authority.
79. While the potential for alternative sites is limited to just the three identified, the lack of robustness in respect of availability therefore moderates the weight I can attach to the purported lack of alternative sites.

*Health and wellbeing*

80. As briefly referenced above, the health and wellbeing benefits were set out in detail by the appellants team, and in particular by Mr Appleton and Mr Phillips, at various points during the Inquiry. These were well evidenced by a plethora of background documents put before me and as quoted by Mr Phillips proof of evidence. I also note that the PPG recognises such benefits, stating that “*offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems.*”<sup>3</sup>
81. In particular the care village concept, with the provision of its own dedicated services and facilities, the care package, including offers for different care needs, would benefit older people residing at the site. Such benefits therefore attract substantial weight into the balance.

*Employment*

82. The parties differed in their views as to the weight to be attached to employment benefits arising from the creation of around 90 full time equivalent jobs plus temporary construction jobs, the reinvestment of the profit of the sale of the appeal site into the garden centre, and the business units at the site. This adds further weight to the case for the appeal.
83. However, I note that that there are high levels of employment and low unemployment, as backed up by official labour market statistics for the district (July 2018-July 2019). Therefore I consider that such benefits are moderated in part by this.

*Highway and accessibility matters*

84. I am satisfied that traffic congestion and associated concerns relating to air pollution would not be realised. I also note that the appellant proposed to install electric vehicle charging points as part of their scheme.
85. Access improvements from the North Orbital Road would also be secured by condition which would benefit users of the site and BGC. While I note that these were subject to a separate approval sought by BGC, this has now lapsed whereas the appeal scheme would ensure these take place. This adds some weight in favour of the proposal.

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<sup>3</sup> Reference ID: 63-001-20190626

86. It was said that the appeal site is in a suitable location to access services and facilities and I do not disagree. It is in close walking distance to local shops at How Wood Village and bus stops and a railway station would also be accessible. However, as a general principle, appropriate access to services and facilities, are a policy expectation for any significant development and as such are a neutral matter in my considerations.

*Effect on Birchwood Bungalow*

87. I am also mindful that there is an objection from a separate care facility at Birchwood Bungalow. This relates to the construction effects from noise and disturbance of the built development upon the residents who have Autism and are in full-time residential care. Accordingly, I have also had due regard to the Public Sector Equality Duty (PSED) established by section 149 of the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
88. Having discussed this matter at the Inquiry, construction is anticipated to take around 2 years, and it would have a phased approach. There would be some impacts experienced by the occupants at Birchwood Bungalow but I consider that these would be time-limited and further minimised by the phased approach. I am also satisfied that specific provision could be made to reduce any such effects through the submission of a Construction Management Plan, and this could be secured by condition. I therefore find no discrimination in this regard.
89. While I have found no conflict with the PSED, this itself would not weigh in favour of the scheme in terms of my assessment of very special circumstances, rather it would be a neutral factor.

**Planning Balance and Very Special Circumstances**

90. For the reasons explained above, I have found that the development would harm the Green Belt due to inappropriateness, loss of openness and conflict with the Green Belt purposes. This would be contrary to LP Policy 1. The Framework requires substantial weight to be given to any harm to the Green Belt.
91. The development would also cause harm to the character and appearance of the area, in conflict with LP Policy 69 and 70. There would also be harm to the setting of the designated heritage assets, which includes the grade II\* listed Burston Manor itself. Employing the terminology of the Framework, that harm amounts to 'less than substantial' but to a moderate degree. This harm, like the harm to the Green Belt, should be given great or substantial weight.
92. On the other side of the planning balance, it is clear that there is a very significant local need for elderly persons' accommodation. The development would help meet a significant proportion of this need and would address this in the short term. St Albans is an area where there is a significant shortfall in overall housing land supply and the development would contribute to this. The development would also help to free up existing market housing. As a care village, the development would cater for a wide range of individual needs in terms of physical ability, dependency and personal care, and would give rise to

- health and welfare benefits. These considerations all weigh substantially in favour of the development.
93. However, in light of my findings above, only moderate weight can be given to a lack of suitable sequentially preferable alternative sites to accommodate the proposal.
94. The development would produce some economic and social benefits in terms of temporary construction jobs and longer-term employment opportunities as well as improved accessibility arising from the works on the North Orbital Road. These matters add further weight to the case for the appeal.
95. I am conscious of the significant local support for the scheme, not just in respect of the need, as addressed above, but in more general terms. This is also reflected by the proposed allocation of the BGC site for C2 development within the emerging NP. However, the weight that can be attached to this is limited at this stage and there are question marks around whether a NP can alter the boundaries of the Green Belt.
96. The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but decisively.
97. Overall, I consider the benefits from the housing and health and wellbeing to be substantial and there are other factors which add to this weight. But even so, they do not clearly outweigh the combined weight of the harm to the Green belt, the harm to designated heritage assets and the harm to character and appearance. Nor would the harm to the heritage assets be outweighed by the public benefits, irrespective of the Green Belt issues.
98. The Council expressed their concerns regarding the 'double-counting' of purported benefits insofar as they considered that specialist C2 provision, release of market housing, and health benefits are a subset of the general housing requirement. By way of response, the appellants drew my attention to two appeal decisions which accord weight to these matters on an individual basis<sup>4</sup>. However, taken together or separately, I consider that they do not outweigh the harm identified.
99. Consequently, despite the considerable merits of the development, the inherent conflict with the development plan and national policy with regard to harm to the Green Belt, designated heritage assets and character and appearance, lead me to conclude that the very special circumstances necessary to justify the proposed development have not been demonstrated.

## **Conclusion**

100. For the reasons given above, and having considered all other matters raised, the appeal is therefore dismissed.

*C Searson*  
INSPECTOR

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<sup>4</sup> APP/H2265/W/18/3202040 & APP/A0665/W/18/3203413

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams of Counsel instructed by David Edwards, Solicitor on behalf of the Council

He called:

Shaun Greaves                                  Director GC Planning Partnership Ltd  
BA (Hons) DipURP, MRTPI

Other Participants at Round Table Discussion:

Sarah Smith                                  Team Leader

### FOR THE APPELLANT:

Robert Walton QC

He called:

David Phillips                                  Director (Planning) Strutt and Parker  
BA (Hons) MSc MRTPI

Other Participants at Round Table Discussion:

Andrew Kenyon                                  Director, Peter Evans Partnership  
BEng FCIHT

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BA (Hons) MA PGCE PG  
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BA (Hons) Dip Arch, RIBA

Nigel Appleton                                  Contact Consulting  
MA (Cantab)

Robert Belcher                                  Carterwood  
FRICS

### INTERESTED PERSONS:

Andrew Emerton	Burston Nurseries, Garden Centre & Fisheries
David Parry	Vice Chair St Stephen Parish Council
Linda Crocker	Chair Cricklewood Residents Association
Dee Youngs	Chair Park Street Residents Association
Simon Kelly	Associate, Richard Buxton Solicitors on behalf of Affordable Care for St Albans
Cllr Sue Featherstone	County and District Councillor for St Stephen (Bricket wood and Chiswell Green)

## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- INQ1 Letter dated 22 November 2019 from Chiswell Green Residents Association
- INQ2 Typed script as read out by Linda Crocker of the Burston Wood Residents Association
- INQ3 Typed script as read out by Dee Youngs of the Park Street Residents Association
- INQ4 Appellant's Opening Submissions
- INQ5 Council's Opening Submissions
- INQ6 Representations on behalf of Affordable Care for St Albans (ACSA) as read out by Simon Kelly of Richard Buxton Solicitors
- INQ7 St Stephen Neighbourhood Plan 2019-2036 Re-Submission Document Draft October 2019
- INQ8 Revised CGI Drawings and key – reference AA6903 03-SL-3D-A—307, AA6903 00-SL-3D-A—011, AA6903 00-SL-3D-A—305 Rev A, AA6903 00-SL-3D-A—106 Rev A, AA6903 00-SL-3D-A—306 Rev A. (Supersede Core Documents CD2.25-2.28)
- INQ9 Revised Landscape Masterplan Reference 0653-00-SL-PL-L-G7-010 Rev G.
- INQ10 Google Earth satellite image of Burston Garden Centre wider area.
- INQ11 Burtson Garden Retirement Village Design and Access Statement July 2018
- INQ12 Burtson Garden Retirement Village Landscape and Visual Impact Assessment Rev B October 2018
- INQ13 Burtson Garden Retirement Village Design and Access Addendum – Landscape October 2018
- INQ14 Revised Schedule of Core Documents 2 December 2019
- INQ15 Updated Schedule of Plans and Documents Associated with the Proposals 2 December 2019
- INQ16 Updated SOCG – Setting out the different projections of Need on a comparable basis 2 December 2019
- INQ17 Further SOCG Alternative Site Assessment 2 December 2019
- INQ18 Updated SOCG – Setting out the different projections of Need on a comparable basis 2 December 2019 \*\* This supersedes INQ16\*\*
- INQ19 More Choice, Greater Voice: a toolkit for producing a strategy for accommodation with care for older people February 2008
- INQ20 Housing in later life: planning for specialist housing for older people December 2012
- INQ21 Copy of draft s106 agreement
- INQ22 St Albans City and District Local Plan 2020-2036 Publication Draft 2018 Exert of Policy S4 and S5.
- INQ23 St Albans City and District Housing Delivery Test Action Plan September 2019
- INQ24 Annotated aerial photograph showing dates of development of Burston Garden Centre Buildings
- INQ25 Site Visit annotated walking route map
- INQ26 Copy of full size application plans
- INQ27 Email from Mr Kelly dated 29 November 2019 representatives of ASCA
- INQ28 Updated draft list of planning conditions
- INQ29 Council's Closing Submissions
- INQ30 Appellant's Closing Submissions