

Planning Statement

**Written Statement
of Case**

Appeal Against Refusal

of

**Amendments to application
24/02908/PNQ - Demolition
of redundant agricultural
buildings and erection of five
dwellings and associated
works**

at

**Land at Fear End, Fears
Green, Sandon, Herts, SG9
0QY**



CONTENTS

1.0	INTRODUCTION	3
2.0	LOCATION AND SITE DESCRIPTION	5
3.0	BACKGROUND AND PLANNING HISTORY.....	6
4.0	APPEAL PROPOSALS	7
5.0	PLANNING POLICY CONTEXT.....	8
6.0	GROUND OF APPEAL	12
7.0	PLANNING BALANCE AND CONCLUSIONS	23

Appendices

Appendix 1: Proposed Site Plan

Appendix 2: Decision Notice – 25/03189/FP – Land at Fears End, Fears Green

Appendix 3: Officers Report – 25/03189/FP – Land at Fears End, Fears Green

Appendix 4: Plans and Decision Notice for 24/02908/PNQ

Appendix 5: Appeal & Costs Decision APP/M1710/W/20/3258256 – Land at The Spinney, Shalden Green Rd

Appendix 6: Email correspondence with Planning Officer

Appendix 7: Swept Path Analysis by Paul Basham Ltd



1.0 INTRODUCTION

1.1 This statement of case has been prepared on behalf of Ms Rosemary Campbell (hereafter referred to as “the Appellant”) in relation to the refusal of a full planning application by North Hertfordshire District Council (hereby referred to as “the LPA”) with application reference 25/03189/FP for:

‘Amendments to application 24/02908/PNQ - Demolition of redundant agricultural buildings and erection of five dwellings and associated works’.

1.2 This description differs slightly from the one published by the LPA.

1.3 A copy of the proposed Site Plan is attached at Appendix 1.

1.4 The application was submitted to the LPA on 8th January 2026. It was subsequently validated on the same day and refused under delegated powers on 27th February 2026.

1.5 The reasons for refusal are as follows:

1. *The proposal for five new dwellings outside a settlement boundary in the Rural Area beyond the Green Belt is contrary to Policy CGB1 of the North Hertfordshire Local Plan 2011-2031. The development does not constitute infill within a defined built core, does not meet a proven local rural housing need, is not strictly necessary for agricultural or forestry purposes, nor does it otherwise satisfy the limited exceptions in Policy CGB1. The scheme, therefore, constitutes unsustainable development in the open countryside.*
2. *The replacement of agricultural building with five new two storey detached dwellings and their associated domestic plots, would result in an unacceptable change in the character and appearance of the rural landscape, contrary to Policies CGB1 and CGB4 of the North Herts Local Plan 2011 -2031, which seek to protect and conserve the rural area and ensure that re-use/replacement of existing rural buildings is appropriate in scale and impact.*
3. *While the planning history, including a prior approval and earlier permission, is acknowledged, these do not outweigh the significant conflict with the provisions of the development plan in its current form. The planning merits of the application must be assessed against up-to-date policies, and the proposal remains unacceptable in the context of policies SP2, CGB1, CBG4 of the North Herts Local Plan 201 -2023 and*



Hertfordshire Local Transport Plan 4. (LTP4).

4. *The application proposal would be located in an area remote from services and facilities such that the occupiers would be almost exclusively reliant on private transport for their everyday needs. This would amount to unsustainable development at odds with the National Planning Policy Framework in its aim to promote sustainable patterns of growth and development and policies in the Council's local plan relating to the same. Accordingly, the scheme is contrary to the core policy, advice and aims set out in the National Planning Policy Framework (NPPF) in seeking a sustainable form of development and is contrary to Policies SP1, SP6 and T1 Local Plan, as well as Policy 5 of Hertfordshire's Local Transport Plan-4.*
5. *The submitted suite of documents (36 in total) does not include a swept-path analysis to demonstrate access for delivery vehicles measuring 6 metres in length. Until these drawings are supplied, the Highway Authority is unable to progress or extend the grant of planning permission.*

1.5 Copies of the Decision Notice and Officer's Report can be found at Appendices 2 and 3, respectively.

1.6 The application was accompanied with the following documents:

- Application Form and Ownership Certificate
- Biodiversity Questionnaire
- Planning Statement (Including Sustainability and Energy Statement)
- Sustainability Checklist
- Ecological Appraisal by Small Ecology
- BNG Metric
- Contamination Report
- 3D Images
- Relevant Appeal Decisions in respect of fallback positions



- Location Plan (amended)
- Proposed Site Plan
- Existing Layout
- Existing Floors and Elevations
- Proposed Floors and Elevations sheet
- Proposed Elevation sheet 2 of 2

1.7 Following due consideration, the Appellant has decided to appeal the LPA's decision. It is considered that the following main issues are to be addressed in this appeal:

- The fallback position, incorporating the sustainability of the site and impact upon the character of the countryside, and
- Lack of a swept path analysis

2.0 LOCATION AND SITE DESCRIPTION

2.1 The appeal site is located within the village of Sandon, outside of the development boundary and within the countryside. The site is situated amongst agricultural land, with little else in the immediate vicinity other than two residential dwellings. The site is set well back from the highway. The site is a farmyard which consists of six vacant agricultural buildings, formerly used for housing pigs and associated storage. The subject barns are approximately 1.0 km north east of the village of Sandon, which itself is located around 6 km north-west of Buntingford and 8 km south-west of Royston. The barns lie to the east side of Kelshall Road (shown as Fears Green on some maps) between Sandon and Kelshall in the southern corner of Kelshall Parish and occupies a site which is generally level. The surrounding land is generally laid to arable farmland, although there are small, wooded areas located immediately to the south and east. Further residential properties, Fears End and Fallowfields, are immediately to the north west of the barns. Apart from some very low key storage of agricultural implements, the buildings are now underutilised.



- 2.2 None of the buildings are located within flood zones 2 and 3. All the buildings subject to this application comprise of timber frame, blockwork plinth, timber cladding, corrugated sheeting to the roof, with concrete floor, building 5 has a profiled sheeting roof. Apart from some very low-key storage of agricultural implements, the buildings are now underutilised. All of the buildings are estimated to be between 40 – 50 years old.
- 2.3 The appeal buildings are barely visible from the public highway but are set back some 70 metres from the road. They are positioned behind existing hedging and the main house, therefore, they are not prominent features in the landscape. The levels at the site are fairly flat, with a very slight incline from the road to the barn.
- 2.4 Historically, the access has been used by farm traffic and therefore, the change to residential traffic associated only with five additional residential dwellings will not have an adverse impact. Notwithstanding this, the highway network is fairly quiet country roads with few traffic movements and traffic movements associated with five additional dwellings can adequately be accommodated on the existing highway network. Adequate visibility can be provided at the access point, meaning there are no highway safety concerns which should warrant refusal of this application. Furthermore, seven dwellings have been approved at the site so this application proposes no additional traffic movements above those already consented, on the contrary, the vehicle movements will reduce from the earlier approved scheme.

3.0 BACKGROUND AND PLANNING HISTORY

- 3.1 Prior to the submission of the host proposal now at appeal, the following applications had been submitted at the site.

24/02360/PNQ - Conversion of agricultural buildings into 9 residential dwellings Refused
16/12/2024

24/02908/PNQ - Conversion of agricultural buildings into 7 residential dwellings Approved
13/02/2025



- 3.2 The approved Class Q application would see the creation of seven dwellings, these would be 2 x 1 bedroom, 2 x 2 bedrooms and 3 x 3 bedroom dwellings. The Class Q proposals would also see the demolition of one building. The total gross external area of the buildings to be converted is 628 square metres (this excludes the building that is due to be demolished as part of the Class Q proposal). Plans and the decision notice are provided in Appendix 4.

4.0 APPEAL PROPOSALS

- 4.1 The appeal seeks full planning permission to erect five new dwellings and demolish the existing agricultural buildings. This will replace the Class Q consented barns granted Prior Approval on the 13th February 2025 for the conversion of the barns into seven dwellings. The appeal proposal would see the removal of the existing redundant agricultural buildings, replacing them with a more appropriate and aesthetically pleasing, purpose-built residential development of five dwellings. A five unit scheme is deemed to be more appropriate for the area and allows for larger dwellings rather than smaller starter homes, as this rural location which are less likely to be sought after. The overall footprint of built form will reduce considerably, as explained below.
- 4.2 The proposals would reduce the footprint of the building from 628 square metres to 409.94 square metres, a considerable reduction. If the agricultural building that was due to be demolished as part of the Class Q proposal is included, this increases to 717 square metres. The resulting floor area of the Class Q permission was 628 square metres, and this was achieved from not utilising one of the buildings on site, this was proposed for demolition, which allowed the development to take place without impact upon the amenities of the users of the proposed dwelling. In addition, the proposals will see the creation of a total of 2621.67 cubic metres of volume, and the consented barns would see the removal of



2679.2 cubic metres of built form, therefore, there is a reduction in both footprint and volume, albeit that the height increases from 7.2 to 7.3 metres. The reduction in footprint and volume, coupled with the improved design and appearance and more appropriate location, a reduced scheme in terms of the number of units created, and overall appearance, result in a lessened impact, improved openness of the countryside and overall enhanced development.

- 4.3 This is a total reduction of 57.53 cubic metres from the existing agricultural building to the proposed new dwellings. It would see the use of high quality materials, including Siberian larch and render and zinc/corrugated metal to the roof. The site area does marginally increase on this application over that of the approved Class Q, however, this is not to any unacceptable level and will provide for a far improved amenity area of that of the approved Class Q scheme. The full sizes of the proposed scheme is set out in the table below:

Location	Type	Description	GIA			GEA			Volume
			Ground	First	Total	Ground	First	Total	
1	1	3bed	53.86	53.86	107.72	66.65	68.00	134.65	426.00
2	1	3bed	53.86	53.86	107.72	66.65	68.00	134.65	426.00
3	2	4bed	65.88	65.88	131.76	80.64	82.27	162.91	506.00
4	3	5bed + Study	95.15	95.15	190.30	115.36	117.12	232.48	757.67
5	2	4bed	65.88	65.88	131.76	80.64	82.27	162.91	506.00
					669.26				2621.67

5.0 PLANNING POLICY CONTEXT

National Planning Policy

- 5.1 National planning policy is contained within the National Planning Policy Framework (NPPF), adopted 2012 with the most recent amendment in December 2024. It is a material consideration in the determination of planning applications.
- 5.2 Development plan policies are material to an application for planning permission, and **the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise** (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004).
- 5.3 The NPPF identifies at paragraph 7 that: *“the purpose of the planning system is to contribute to the achievement of sustainable development”* and identifies three overarching objectives, which are economic, social and environmental.



- 5.4 Paragraph 10 goes on to state: *“So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11). For decision-taking this means: c) Approving development proposals that accord with an up-to-date development plan without delay; or d) Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*
- 5.5 Paragraph 11d is of specific relevance to this appeal as discussed in more detail below.
- 5.6 Government seeks to encourage LPA’s to be positive in their decision making, stipulating at paragraph 39 that they ***“should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”*** [emphasis added]
- 5.7 As set out in Section 5 of the NPPF, one of the Government’s objectives is to deliver a sufficient supply of new homes. Paragraph 61 states that: *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”*



- 5.8 Paragraph 73 goes on to state that “Small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly.” It goes on to state in section ‘d’ that *“support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes”*
- 5.9 Of specific relevance to this application is Paragraph 78, which requires LPAs to update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing for decision-making purposes if their adopted plan is more than five years old, which is the case here.
- 5.10 The National Planning Practice Guidance (NPPG) on Housing supply and delivery states at Paragraph 008 that *“In decision-taking, if an authority cannot demonstrate a 5 year housing land supply, including any appropriate buffer, the presumption in favour of sustainable development will apply, as set out in paragraph 11d of the National Planning Policy Framework.”*
- 5.11 The application was submitted to the LPA on 8th January 2026. It was subsequently validated on the same day and refused under delegated powers on 27th February 2026.

Local Planning Policy

- 5.12 Local Planning Policy comprises the North Herts Local Plan 2011-2031. The most relevant policies are mentioned below, whilst others may be pertinent to the application, they are covered in section 6 of this report.
- 5.13 Policy SP2 sets out the settlement hierarchy for the district. Sandon is stated to be a Category A village, where general development will be allowed within the defined settlement boundaries.



- 5.14 Policy CGB1 is concerned with the Rural Area beyond the Green Belt. It states that planning permission will be granted provided that development: -
- 5.15 'a) Is infilling development which does not extend the built core of a Category B village;
- b) Meets a proven local need for community facilities, services or affordable housing in an appropriate location;
- c) Is strictly necessary for the needs of agriculture or forestry;
- d) Relates to an existing rural building
- e) Is a modest proposal for rural economic development or diversification; or
- f) Would provide land or facilities for outdoor sport, outdoor recreation and cemeteries that respect the generally open nature of the rural area.'
- 5.16 The most pertinent policy in the Local Plan in respect of these proposals is CBG4. This states that: -
- 'a) Planning permission for the re-use, replacement or extension of buildings in the Rural Area beyond the Green Belt will be granted provided that:
- b) Any existing building to be converted for re-use does not require major extension or reconstruction;
- c) The resultant building(s) do not have a materially greater impact on the openness, purposes or general policy aims of the Rural Area beyond the Green Belt than the original building(s); and
- d) Any outbuilding(s) are sited as close as possible to the main building(s) and visually subordinate to them.'
- 5.17 Policy D2 is also relevant, albeit not strictly directly relevant, being concerned with inter alia replacement dwellings. This planning application replaces a planning permission which secured consent for the conversion of an agricultural building into residential,



therefore, although this host application does not replace a dwelling, it does replace the consent to turn the building into a residential use and is therefore relevant, it states:

Planning permission for replacement dwellings and outbuildings will be granted where:

- a) The proposal does not harm the character and appearance of the site; and
- b) The location of the proposal does not have an adverse impact on the character and appearance of the street scene or area.

6.0 GROUNDS OF APPEAL

6.1 The following matters are of material importance to the appeal at hand, and will be addressed in the paragraphs that follow:

- The established fallback position and the weight that should be attributed to it and how this subsequently impacts upon the sustainability of the site and the impact upon the character of the area, and
- The swept path analysis

6.2 The Case Officer's Delegated Report (Appendix 3) sets out considerations that led to the application being refused.

The Fallback position

6.3 Turning firstly to the fallback position, which in the appellant's opinion constitutes a material consideration of significant weight. Prior Approval consent has been granted for the conversion of the existing buildings into residential dwellings, creating seven separate residential units. Although the work on this development has not commenced, there is little doubt that the conversions would take place should this host development not be allowed.



- 6.4 In respect of this, the LPA have suggested in their delegated report (para 4.3.16) that the option to convert the buildings into seven dwellings is not a realistic option. This is a strange suggestion given the value that the Class Q consent adds to the site over the existing use as redundant and worn-out agricultural buildings. There, realistically, is little doubt that, if this planning appeal to build five new dwellings is dismissed, then the site will be sold to a developer, who although would likely prefer to build out this five unit scheme, would most certainly settle for a seven unit conversion scheme. Essentially, the five unit scheme is more financially valuable and thus the preferred option, but there can be no realistic doubt that the seven unit conversion scheme, despite its faults, will add significant value to the site above its current level. It is therefore a realistic fallback position.
- 6.5 Although the existing buildings are in a poor state of repair, any conversion from agriculture to dwelling will require a substantial amount of work regardless to whether those buildings are older and falling into disrepair. Costs of a conversion scheme over a new building are little different. The mere fact that the Class Q scheme will provide smaller dwellings (albeit more of them) does not make it unviable or unlikely to be developed, it simply does not provide as good a return for the appellant, who is selling the site, along with their home, and moving from the area. In this respect, it is pertinent to note that the site is currently up for sale, with both the five unit scheme and the seven unit scheme available to the potential buyer, this will be a 'subject to planning' sale, with two potential figures, one for the conversion scheme and one for the new build, if permitted. Although it is a less valuable development in our opinion, there can be no doubt that the Class Q consent adds significant additional value to the site and is therefore a very realistic fallback position.
- 6.6 Once the fallback position is borne in mind as a realistic alternative, the refusal reasons 1 and 4 both fall away. The mere fact that the site is located outside of the development boundary and is deemed to be away from shops and services cannot be an issue, as in the event that the appeal is dismissed, the fallback position would be developed, which would result in two additional dwellings above the host appeal proposal. It should also be noted that refusal reason no. 3 does not actually add further issues, as it simply states that the proposal is contrary to the development plan.



- 6.7 The LPA quotes two appeal decisions in their delegated report, commentary on those two appeals is contained in the delegated report at para 4.3.14. However, in response, on appeal 3343480 (East Lindsey), the inspector comments that the appeal scheme dwellings *“would be higher and would lead to a projection of built development beyond that of the existing cluster of buildings, which include the appeal site”*. The Inspector also comments that *“the design of the proposed dwellings is an awkward mix of agricultural and residential elements, and of a scale which would exacerbate their incongruous appearance. The houses would express a contortion of two different architectural languages, including agro-industrial elements such as the scale of openings, the overall height and materials of an agro-industrial character jarring with a residential arrangement of openings and familiar domestic forms.”*
- 6.8 The Inspector goes on to confirm that *“The Class Q conversion would also change the character of the building to a residential nature. The conversion would retain the understated scale and appearance of the extant building and would improve the appearance of the site by bringing the building back into an active use and removing the unsightly external storage. However, despite the introduction of a residential use and curtilage, the conversion would not lead to a development of the same massing or unacceptable design as the appeal proposal.”* This is unlike the host appeal, which would reduce built form and provide for a far better resulting development. It is also pertinent that the Inspector agrees that even the conversion of the agricultural buildings will change their character to a residential nature, which is an obvious statement but one certainly worth mentioning.
- 6.9 On the host appeal, no issues of design have been raised and the proposed development stays on the existing farmyard and in close proximity to all existing agricultural buildings. No specific issues relating to these proposals arise, other than the ‘in principle’ objection to the new build development proposal.
- 6.10 The Inspector noted that the site was remote from shops and services and limited bus services existed and stated *“Based on the evidence before me, I consider residents would be likely to rely on the private vehicle to access services and employment. Nevertheless, I acknowledge that this would also apply to the Class Q scheme, albeit with a smaller amount of accommodation.”* That is where the difference between this historic case in East Lindsay and the host appeal differ, the LPA have not recognised that, regardless of the outcome of this



appeal, residential dwellings will be located at Fears Green, whether this be the consented Class Q proposal or this appeal. Given the distance from shops and services, the reduction from seven units down to five is also a matter which weighs in favour of the development, a matter that is given no consideration due to the refusal reasons clearly giving no weight to the fallback position.

6.11 In respect of the second appeal decision provided by the LPA, Class Q consent had not been granted, instead this angle was used by the appellant to justify their proposal, hence the reason the Inspector refused to give it credible weight. The Inspector stated *“I have had regard to the purported fallback position under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which relates to buildings on agricultural units and former agricultural buildings to dwellinghouses. It is not the purpose of this appeal decision to provide a formal determination as to whether prior approval should be granted under Class Q. Instead, it is necessary to consider whether or not there is a real prospect that such a development could take place.”* He went on to state *“Hence, taking account of Mansell, and also noting that no evidence of a submission of a prior approval application under Class Q has been provided, the fallback position is merely a theoretical prospect. As such, this is a neutral matter, which does not weigh in favour of the proposed development.”* Subsequently this appeal is of no relevance to the host appeal, which does provide Prior Approval for seven dwellings on the redundant farmyard, which is a very credible and realistic alternative to the appeal proposal.

6.12 Paragraph 4.3.5 of the delegated report recognises that *“Under the National Planning Policy Framework (NPPF) and the Planning Acts, decisions must be made in accordance with the development plan unless material considerations indicate otherwise”*. However, it is apparently that in this case, where material considerations do indicate otherwise, that they have not been attributed sufficient weight. Instead, the proposals have been looked at squarely against Planning Policies, which agreeably, the proposals do not comply. But when the fallback position is borne in mind, a departure from the development plan would seem logical and appropriate in this instance. The LPA have failed to do this and confirm this at



paragraph 4.3.10 of the delegated report, stating *“While the planning history, including a prior approval, is acknowledged, these do not outweigh the significant conflict with the provisions of the development plan in its current form”*.

- 6.13 Paragraph 4.3.12 suggests that the appeal proposals will result in a material greater impact upon the Green Belt, this is also indicated in refusal reason 2, which states that the appeal proposal would result in an *“unacceptable change in the character and appearance of the rural landscape”*. The applicants contend that a change does not equal a negative impact. The full details of the appeal proposal against the Class Q are covered extensively in the Planning Statement, and therefore there is no need to replicate them here, but the resulting appeal proposals will be sited fully upon the existing farmyard hardstanding, will cover a smaller area and result in an overall reduction in built form. Subsequently, when the fallback position is borne in mind, the appeal proposals are sensitive to the character of the area, even if this will result in change.
- 6.14 Although neither the design nor appearance of the proposed buildings is raised on the decision notice, the delegated report does include one paragraph which is critical of the design (4.3.25). However, the proposed buildings are agricultural in appearance and suitable for this rural area. They avoid the sprawling footprints that are currently present, reducing this by increasing most buildings in height, although it should be noted that the existing tallest (two storey) building is on par with the height of these proposals.
- 6.15 During the course of the application, discussions did take place regarding the fallback position when the agent was informed that the application was likely to be refused. Following this, an additional appeal case was provided to the LPA, this included the appeal and an application for costs, these are discussed below and are contained at appendix 5).
- 6.16 Firstly, the planning appeal, (contained at appendix 5,) paragraph confirms at paragraph 7 that *“The site benefits from 2 extant permissions¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) (the GPDO), which would allow the barn and one of the poultry sheds to be converted into dwellings”*. Paragraphs 12 & 13 go on to state that *“The site is not an allocated site, and the*



appellant has not sought to justify the proposal on the basis of requiring a countryside location. As such, the appeal scheme is clearly in conflict with the above policies. Section 38 (6) of the Act sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the extant permissions to convert the barn and one of the poultry sheds into dwellings constitute a significant material consideration.”

6.17 The Inspector goes on to state in Paragraphs 14, 15 & 16 that: -

“Whilst acknowledging that these permissions are a material consideration, the Council’s view is that they do not justify approval of a new dwelling in the countryside. The Council considers that they are specific to the barns, and permissible as conversions under permitted development, so that if the barns were to be demolished, as proposed, these permissions would be extinguished.

Having regard to the Court of Appeal judgement relating to fallback positions, I do not concur with the Council’s view. Although the prior approval process is separate to the planning application process, this judgement clarifies the principle that, in considering proposals for new development, decision-makers should have regard to the fallback position of lawful development which has a real prospect of taking place in the alternative. The demonstration of a real prospect of a fallback scheme being implemented does not necessarily require a permission or prior approval to have already been secured.

In this case, whilst the extant permissions have not been implemented, I find that there is a real possibility of either or both of the prior approval schemes being implemented in the event that this appeal fails. This is evidenced by the existence of the two extant prior approval decisions and the appellants' stated intention to implement the schemes. I see no reason to take a different view. The implementation of both schemes would result in 2 residential properties on the site. While this should not automatically guarantee planning permission for the appeal scheme, the fallback position is an important material consideration that carries significant weight for the purpose of my decision.”



6.18 At Paragraph 21, the Inspector notes that: -

“Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, having regard to the above, I find that the conflict with the development plan in respect of the location of the proposal is outweighed by the reduction in the number of dwellings, and the potential biodiversity, landscaping, living conditions and sustainability benefits arising from the implementation of the proposal instead of the extant permissions. On this basis, I therefore find that the barn is a suitable location for a dwelling.”

6.19 It would seem that the circumstances between these two appeals are striking. Both the host appeal and this one reduce the number of units on site, to the betterment of the area. Although the appeal proposal may conflict with the development plan in respect of its location for new dwellings, the fallback position must be borne in mind, seven dwellings will be constructed in the event that the planning appeal is dismissed.

6.20 In regard to the application for costs against the LPA, the applicant's case was that in paragraph 5 states *“in refusing planning permission for the reason that the appeal scheme comprises inappropriate residential development in the countryside without a demonstrated need, the Council has not given appropriate weight to other material considerations, notably case law and previous appeal decisions.”*

6.21 The Inspector finds at Paragraph 7 that *“I have found that the conflict with the development plan in respect of the location of the proposal is outweighed by the is outweighed by the reduction in the number of dwellings, and the potential biodiversity, landscaping, living conditions and sustainability benefits arising from the implementation of the proposal instead of the extant permissions.”* Once again, the similarities of the host appeal and this is striking, with each benefit of the planning proposal relevant to the host appeal also.

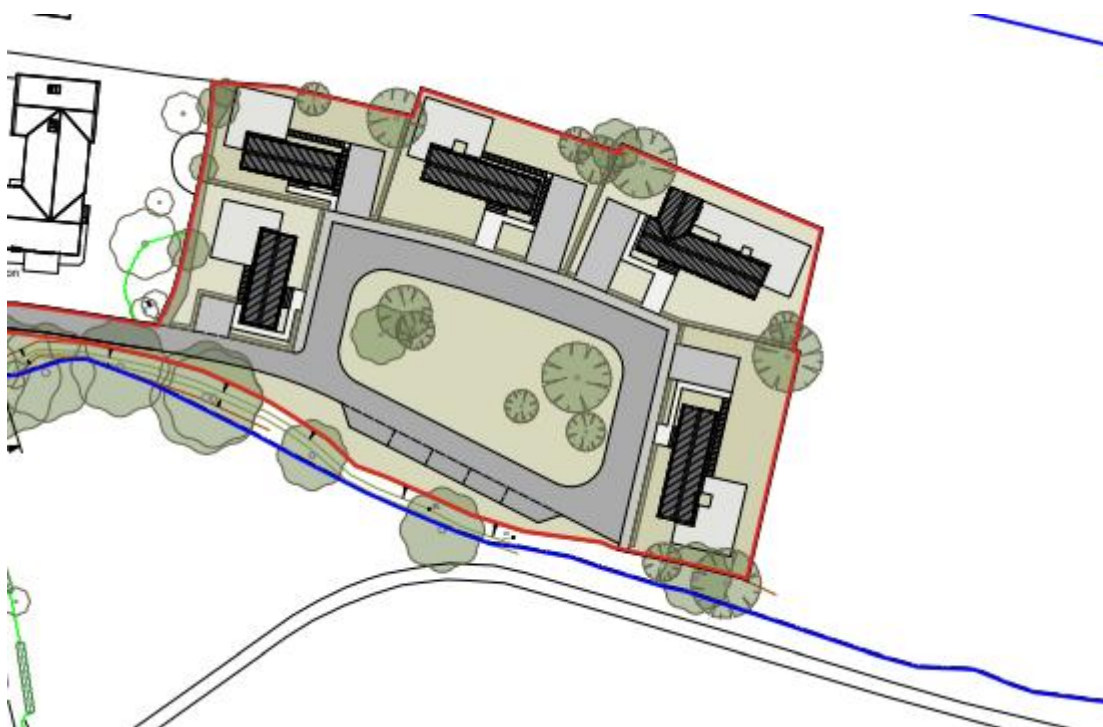


- 6.22 Finally, the inspector states at Paragraph 10 that *“in this instance, the applicants submitted detailed information in respect of the relevant case law relating to the weight to be given to realistic fallback positions in decision-making, supported by a number of recent appeal decisions. Whilst acknowledging that the fallback position should be a material consideration, the Council has not provided an objective analysis of why it has concluded that the fallback position does not automatically justify a departure from planning policy.”* He goes on to state in Paragraph 11 that “it is not evident from the Council’s officer report, appeal statement, or reason for refusal, that the Council has assessed the appeal scheme against the relevant case law and appeal decisions cited by the applicants. Nor is it apparent that the Council has undertaken a balancing exercise of other material considerations, including case law, other appeal decisions and benefits arising from the development, against the failure of the scheme to accord with development plan policies in respect of the location of new housing, as required by Section 38 (6) of the Act, which sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.”
- 6.23 As previously mentioned, this example appeal decision, along with a number of others, were submitted to the Local Planning Authority, and the case was made robustly in the Planning Statement regarding the fallback position, however, they have failed to properly take into account the fallback position and have evidently refused the application based on the development plan alone and not the material considerations and established case law. A copy of the email correspondence can be found at appendix 6.
- 6.24 Notwithstanding the above, it is worth noting that the site is within walking distance of the church, post office, primary school, village hall and Sandon Manor, which now employs over 10 local people. Various activities take place at the village hall which are organised by the villagers. There is also the HCC Lynx bus service for travelling to local towns and good delivery services available from grocery stores.
- 6.25 Sandon is one of the longest villages in the country, running from A505 to A10, covering many small groups of houses such as Lye End, Mill End, Green End, and Roe Green, which are much further from the centre than Fears End, with each having a sense of community.

6.26 Once the fallback position has been recognised as a genuine position, the two proposals can be assessed against one another. For ease of reference, the two site layouts are replicated below: -



Class Q (buildings 1-6 converted to seven residential units)



Site layout for the five unit scheme.

6.27 The proposed five unit planning application provides a pleasant layout, with appropriate spacing between dwellings. The Class Q development would see buildings 1, 2, 3 & four compacted together, with windows and doors overlooking one another. Curtilages will be contrived and parking will be located wherever it can be found. It would result in a poorly laid out development and certainly would never have been granted planning permission as a new build with this layout. On the contrary, the proposed five units are pleasantly spaced out, covering less than half the footprint, and reduce the overall volume of built form and subsequently have a positive impact upon the countryside due to the removal of the barns. The creation of a central open island will further enhance the overall development when compared to the consented Class Q scheme. All this can be complemented with an appropriate landscaping scheme which is not required by the Class Q consent.



- 6.28 The proposed five unit scheme will provide a 10% Biodiversity Net Gain, which is also a further material consideration and a benefit over the Class Q scheme. Under Class Q, BNG is not a requirement and subsequently, it has not been secured. However, conditions would be attached to this appeal if it were approved, securing BNG, which further weighs in favour of the appeal scheme.
- 6.29 The reduction from seven dwellings to five is also deemed to be a benefit to this scheme. Five new dwellings would, in the appellants' view, be a better fit for the rural area. If sustainability issues are present, which the LPA certainly suggest, then a reduction in units should be deemed to be beneficial. This is another matter which has not been attributed any weight in the decision making process but should be a material consideration of considerable weight in the circumstances.
- 6.30 Under this planning appeal, landscaping can be secured via condition, this is not possible under a Class Q consent. For a rural development of 5/7 dwellings, landscaping would be imperative to secure a high quality development. Even if the LPA deem that the existing buildings do not require it, once the buildings are converted and have a far more residential look and feel, along with 7 curtilages and circa 18 parking spaces, not to mention sheds, and other domestic paraphernalia, the agricultural appearance will disintegrate, making landscaping on the host appeal a significant benefit.
- 6.31 Finally, overall, there can be little doubt that the host appeal scheme provides a better planned development than that of the Class Q consent and there is no genuine doubt that the Class Q consent would take place if this host appeal were dismissed, given that it adds significant value to the site. No real justification has been provided by the LPA as to why they consider this to be the case (other than the agent's suggestion that the barns are dilapidated and that the five units scheme would be preferable). The benefits of the appeal scheme have been afforded no weight by the LPA, who have taken the view that the site is in an unsustainable location and the proposals contrary to the development plan.



Swept path analysis

- 6.32 A swept path analysis has taken place as part of the appeal. Initially, the LPA had requested this information along with an extension of time, however on instruction of the swept path analysis, a decision notice was received refusing the application. Subsequently, despite this being invited, it was not submitted as part of the application during its lifetime.
- 6.33 The full details of the swept path analysis can be found at appendix 7, including the swept path plan and covering letter from the consultants. This confirms that both a fire tender and a large delivery vehicle can enter, manoeuvre within, and exit the site without conflict or obstruction. Subsequently, refusal reason no.5 is addressed and overcome. It is worth noting that the appellant does not feel that this was necessary for the appeal if the fallback position was borne in mind, which obviously did not provide appropriate access and egress for a fire tender and permitted two additional units on top of the appeal proposal. This is of course, just another benefit to this proposal over that of the consented Class Q.

7.0 PLANNING BALANCE AND CONCLUSIONS

- 7.1 The appeal scheme is a unique opportunity to provide much needed residential accommodation in an attractive rural setting without any harm to the immediate environment (when the fallback position is borne in mind).
- 7.2 As evidenced in this appeal statement and supported by recent appeal decisions, North Herts District LPA cannot currently demonstrate a 5-year housing land supply. As such, the '*tilted balance*' applies as per paragraph 11(d) of the NPPF. It is set out here that the reasons for refusal of the appeal planning application is outweighed by the benefits that weigh in favour of supporting the scheme through efficient use of suitable and available land to appropriately accommodate the new dwellings that would contribute to the LPA's housing supply.
- 7.3 The two primary issues relating to the refusal were the sustainability of the site and the impact upon the character of the countryside. These issues failed to take into account the realistic fallback position of the Class Q consent, which permits more housing than the appeal scheme.



This material consideration is of significant weight and established case law confirms this stance. However, this has not been recognised by the LPA, who have refused on development plan grounds against the principle of the development.

- 7.4 Benefits of the appeal scheme over the Class Q consent include the reduction in units to assist in mitigating the sustainability issues raised by the LPA's, a properly planned development unconstrained by the location of the existing barns. Subsequent neighbouring amenity issues will be dissolved, which would occur if the Class Q consent is developed. BNG is required on this appeal scheme, but it is not on the Class Q, and a landscaping condition can be appended to any approval so that this can be implemented to enhance the development.
- 7.5 Collectively, the matters set out in this Statement are considered to positively achieve the aims of sustainable development. The appeal proposals will provide for a far improved outcome in comparison to the Class Q proposals and thus respecting the purpose of planning. In the public interest, it is therefore respectfully requested that the appeal is allowed.