

<b>ITEM NO:</b>	<u>Location:</u>	<b>Baileys Close Farm Pasture Lane Breachwood Green Hertfordshire SG4 8NY</b>
	<u>Applicant:</u>	<b>Mr A Brewer</b>
	<u>Proposal:</u>	<b>Residential development comprising of 2 x 2 bedroom bungalows, 6 x 2 bedroom houses and 6 x 3 bedroom houses with associated landscaping, parking and vehicular access following demolition of existing commercial buildings</b>
	<u>Ref. No:</u>	18/01814/FP
	<u>Officer:</u>	<b>Tom Rea</b>

**Date of expiry of statutory period:** 15.10.2018

**Reason for Delay**

N/A.

**Reason for Referral to Committee**

Councillor Barnard supports the view of the Parish Council which is to support this application. Therefore the application is referred to the Committee under the Council's constitution (paragraph 8.4.5).

**1.0 Relevant History**

- 1.1 91/00280/1 – Continued use of premises for the repair and maintenance of motor vehicles, granted.
- 1.2 17/01957/1PRE – Erection of 13 residential dwellings with associated landscaping and car parking.
- 1.3 17/04392/FP – Residential development comprising of 4 x 1 bedroom flats, 6 x 2 bedroom houses and 8 x 3 bedroom houses with associated landscaping, parking and vehicular access following demolition of existing commercial buildings. Refused permission at NHDC Planning Control Committee on 19<sup>th</sup> April 2018.

1. The application site is within the Green Belt as identified in the North Hertfordshire District Local Plan No. 2 with Alterations (Saved Policies, 2007) wherein permission will only be given for the erection of new buildings for agricultural purposes, other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. The proposed development is an inappropriate form of development in the Green Belt and therefore is unacceptable

in terms of Policy 2 of the North Hertfordshire Local Plan No. 2 with Alterations (Saved Policies, 2007) and the guidance in Section 9 of the National Planning Policy Framework. The proposed development cannot be justified in terms of the purposes specified and no very special circumstances have been demonstrated which may justify an exception to be made for such development in the Green Belt.

2. By reason of the number of dwellings proposed, their excessive height, overtly domestic appearance and the generally urban form, the development would have a harmful effect on the character and appearance of the area. Furthermore the proposed development would have significant adverse landscape and visual effects due to its separation from the village to the north and its prominent location adjacent to a public footpath and rural lane. As such the proposals would not comply with Policy 57 of the adopted local plan or Submission Local Plan Policies SP1, SP9 and D1. The proposals would not enhance the quality of the area and would constitute poor design not complying with paragraphs 58 and 64 of the National Planning Policy Framework.

3. The proposed development would be located within the London Luton Airport Public Safety Zone within which development should be restricted on safety grounds. The development would be contrary to the guidance contained within Circular 01/2010: Control of Development in Airport Public Safety Zones.

4. The proposed development would be located within the London Luton Airport Noise Contour area which is subject to high noise levels from aircraft movement. As such, the development would be likely to result in a poor standard of residential amenity to the occupiers of the proposed dwellings contrary to the provisions of Policy 57 of the North Hertfordshire District Local Plan and Sections 6 and 7 of the National Planning Policy Framework.

5. Inadequate information has been submitted to demonstrate that the development will not result in flood risk contrary to Section 10 of the National Planning Policy Framework.

6. The submitted planning application has not been accompanied by a valid legal undertaking (in the form of a Section 106 obligation) securing the provision of affordable housing and other necessary obligations as set out in the Council's Planning Obligations Supplementary Planning Document (SPD) (adopted November 2006) and the Planning obligation guidance - toolkit for Hertfordshire: Hertfordshire County Council's requirements January 2008. The secure delivery of these obligations is required to mitigate the impact of the development on the identified services in accordance with the adopted Planning Obligations SPD, Policy 51 of the North Hertfordshire District Local Plan No. 2 - with Alterations (Saved Policies 2007) or Proposed Local Plan Policy HS2 of the Council's Proposed Submission Local Plan (2011-2031). Without this mechanism to secure these provisions the development scheme cannot be considered as sustainable form of development contrary of the requirements of the National Planning Policy Framework (NPPF)

## 2.0 **Policies**

### 2.1 **North Hertfordshire District Local Plan No.2 with Alterations (Saved Policies)**

Policy 2 - Green Belt.

Policy 26 - Housing proposals.

Policy 51 - Development Effects and Planning Gain.

Policy 55 - Car Parking Standards.

Policy 57 - Residential Guidelines and Standards.

#### **Supplementary Planning Documents.**

Design SPD

Planning Obligations SPD

Vehicle Parking Provision at New Development SPD.

### 2.2 **National Planning Policy Framework (2019)**

Section 2 - Achieving sustainable development

Section 5 - Delivering a sufficient supply of new homes.

Section 6 - Building a strong, competitive economy

Section 8 - Promoting healthy and safe communities.

Section 9 - Promoting sustainable transport.

Section 11 - Making effective use of land.

Section 12 - Achieving well-designed places.

Section 13 - Protecting Green Belt land

Section 15 - Conserving and enhancing the natural environment.

### 2.3 **North Hertfordshire District Local Plan 2011-2031 Proposed Submission (Main modifications November 2018)**

Policy SP1 Sustainable Development in North Hertfordshire

Policy SP2 Settlement Hierarchy and Spatial Distribution

Policy SP5 Countryside and Green Belt

Policy SP6 Sustainable Transport

Policy SP7 Infrastructure Requirements and Developer Contributions

Policy SP8 Housing

Policy SP9 Design and Sustainability

Policy SP10 Healthy Communities

Policy SP11 Natural Resources and Sustainability

Policy T1 Assessment of Transport Matters

Policy T2 Parking

Policy HS2 Affordable Housing

Policy HS3 Housing Mix

Policy HS5 Accessible and Adaptable Housing

Policy D1 Sustainable Design

Policy D3 Protecting Living conditions

Policy D4 Air Quality

Policy NE1 Landscape

Policy NE7 Reducing Flood Risk

Policy NE8 Sustainable Drainage Systems

Policy NE11 Contaminated Land

## Appendix 4: Car Parking Standards

The application site lies outside of the village of Breachwood Green which is identified as a Category A settlement in the NHDC Submission Local Plan.

### 2.4 **Kings Walden Parish Neighbourhood Plan**

There is currently no approved Neighbourhood Plan area for Kings Walden Parish.

### 2.5 **National Planning Practice Guidance**

Provides a range of guidance on planning matters including flood risk, viability, design and planning obligations.

### 2.6 **Circular 01/2010: Control of Development in Airport Public Safety Zones**

## 3.0 **Representations**

### 3.1 **Kings Walden Parish Council:**

Support this application with the following suggested conditions:

- ☐ A suitably safe pedestrian footway be provided between the development and the recreation ground and school.
- ☐ A contribution towards the recreation ground play equipment is negotiated.

The Parish Council members commented on the improvement the development would bring to the village. The current site is not attractive and the re-use of previously developed land for housing is welcomed.

The Council supported the previous scheme and hope the current permission will be granted.

Local resident input:

- ☐ Letters in support 37
- ☐ Letters against 1
- ☐ Neutral 2

The Parish Council consider that this level of support is unprecedented and represents around 10% of households in the village.

### 3.2 **Hertfordshire Highways:**

Initial response dated 9<sup>th</sup> August 2018 recommended refusal of the application on the following grounds:

- 1) The site is remote from key facilities / amenities and does not benefit from good access to sustainable travel infrastructure contrary to the NPPF and LTP4
- 2) Lack of cycling parking and EV charging infrastructure on site
- 3) Lack of information on the new widened carriageway and a footway

Since this response, the LPA has engaged in discussion with the applicants agents and the Highway Authority on the potential to deliver a new footway from the application site towards the village. Whilst some progress has been made on this matter, the Highway Authority is not satisfied on the detail of the proposed footpath link, how it will tie in with the application site, the funding levels proposed and also

have raised concerns over visibility splays around the site access. Consequently the Highway Authority have confirmed their objection to the proposals remain.

**3.3 NHDC Waste Services Manager:**

Recommends a condition concerning refuse collection circulation routes and advises that the development incorporates various measures relating to separation of waste and waste storage and collection procedures.

**3.4 Lead Local Flood Authority :**

Advises that the LLFA have no objection in principle and therefore recommend conditions.

**3.5 Hertfordshire County Council (Growth & Infrastructure):**

Request financial contributions towards the following services:

- 1) Primary education - Expansion of Breachwood Green JMI School - £23,102
- 2) Secondary education – towards either the provision of the new secondary school at the East of Luton development or a further 1 FE expansion at The Priory School, Hitchin, depending on the timing and phasing of development - £21,782
- 3) Youth services – towards the expansion and provision of storage equipment to facilitate and deliver a programme of outreach sessions in NH villages, including Breachwood Green at Bancroft / Nightingale House - £428

Hertfordshire County Council, as statutory fire authority, also require the provision of fire hydrants as set out within the HCC Planning Obligations Toolkit.

**3.6 Hertfordshire Ecology:**

Recommends the imposition of two informatives concerning bats and their roosts and breeding birds during construction phase.

**3.7 NHDC Environmental Health (Contamination)**

Advises that the site is likely to be adversely affected by ground contamination arising from the previous commercial use and therefore recommends a Phase 1 Environmental Risk assessment condition and an Electric Vehicle Recharging Infrastructure condition.

**3.8 NHDC Environmental Health (Noise)**

Detailed comments have been received from the Council's Senior Environmental Health officer and the Council's Environmental Protection and Housing Manager and include a response to the applicants submitted 'Noise Impact Assessment' and subsequent comments made by the applicants noise consultants.

The Senior Environmental Health officer (SEHO) advises, in terms of internal noise levels, that whilst various alternative ventilation specifications could be agreed currently, with the growth of London Luton Airport over the next decade the development will not be future proofed against rising noise levels. With regard to external amenity area noise levels the officer considers that there is not a strong enough argument that the site is desirable for development such that a compromise over high external noise levels should be allowed. As such the officer recommends that the adverse impacts on prospective future residents is such that planning permission should not be granted.

The Council's Senior Environmental Protection and Housing Manager has been asked to review the advice given by the SEHO and respond to further comments made by the applicants noise consultants. The Senior Environmental Protection and Housing Manager is concerned at the limited noise monitoring undertaken by the applicants noise consultants and refers to a recent Environmental Assessment Scoping report produced for the expansion of London Luton Airport which is a more comprehensive assessment of background noise levels than the noise monitoring undertaken by the applicants consultants. The Manager is particularly concerned at the significant impact on public health and quality of life as a result of the siting of the proposed development within high noise contour areas associated with Luton Airport and as such recommends that permission should be refused.

**3.9 NHDC Housing Officer:**

Advises that based on the provision of 14 dwellings a 25% affordable housing provision would equate to 4 affordable dwellings. To meet housing need identified in the 2014 Rural Housing Needs Survey (for Kings Walden) and the 2016 Strategic Housing Market Assessment, the affordable homes should comprise 4 x 2 bed houses (3 for rent and 1 intermediate affordable housing tenure/ shared ownership) to best meet the identified housing need. If the application is approved, allocation of the affordable homes should be restricted to residents with a local connection to the parish of Kings Walden in the first instance.

**3.10 Hertfordshire County Council (Rights of Way unit)**

Any comments received will be reported at the meeting

**3.11 Landscape and Urban Design officer:**

Raises concern at the suburban form, appearance and density of the development. Concerned at the loss of existing hedgerow with the PRoW 4. Concern at proximity of frontage development along Pasture Lane. Considers that the proposal is an overdevelopment of the site and will fail to create a high quality development appropriate for this location.

**3.12 London Luton Airport (Aerodrome Compliance Manager):**

Advises that the proposed development has been examined from an aerodrome safeguarding aspect and whilst it does not conflict with the safeguarding criteria relating to the Obstacle Limitation Surfaces, the LPA is advised in relation to building design (to reduce birdstrike hazard) and that external lighting is designed to avoid distraction to pilots.

**3.13 HCC Historic Environment Advisor:**

Advises that the development is unlikely to have a significant impact on heritage assets of archaeological interest and therefore have no further comments.

**3.14 Site Notice/ Neighbour consultation:** Letters of concern and or objection received from two local residents raising the following comments:

- ☐ Concern at development site under the Airport flight path
- ☐ Proposal is detrimental to the openness of the rural area
- ☐ Loss of employment opportunities
- ☐ There is no safe means of walking to and from the site resulting in all

- journeys being made by car and therefore the development is unsustainable
- ☐ Proposals contrary to Green Belt policy
- ☐ Will not be integrated with the village
- ☐ Design inappropriate for the rural area
- ☐ Scale and density of development inappropriate for the site. Will have a far greater visual impact than the current site
- ☐ Concern at dangerous entrance to the site / safe access to the village

Letter from one local resident raising the following comments:

- ☐ Too many houses on a small bit of land
- ☐ No social housing
- ☐ Under the Luton Airport flight path / noise
- ☐ Green belt and may be listed
- ☐ Separated from the village
- ☐ Highway safety issues

Letters of support received from two local residents commenting as follows:

- ☐ Support the scheme generally
- ☐ Will contribute towards affordable housing in Breachwood Green

Letter of support received from the Right Honourable Bim Afolami, Member of Parliament for Hitchin and Harpenden commenting as follows:

- ☐ There is widely held local support for this application
- ☐ A sensible and rational approach to development that will not detrimentally affect the village
- ☐ Will help local residents get onto the housing ladder
- ☐ An appropriate and proportionate development for this rural area

### 3.15 CPRE Hertfordshire:

Query the sustainability of the development and its suitability for development.

## 4.0 **Planning Considerations**

### 4.1 **Site & Surroundings**

- 4.1.1 The application site is located on Pasture Lane approximately 0.3 km south of Breachwood Green village. The application site is irregular in shape, relatively flat and covers approximately 0.44 hectares. The site consists of seven industrial buildings previously used in connection with a car repair and workshop business. There are also several storage sheds and mobile structures including a disused caravan located towards the northern boundary of the site. The site includes a large area of hardsurfacing. The site is now unoccupied and several of the buildings are in poor condition. There is a large amount of car parts and associated garage workshop materials littered around the site. Towards the northern section of the site is a brick built tower structure with a flat roof. Vehicular access is via a gated entrance located on a bend in Pasture Lane. Public footpath No. 4 to Wandon End runs along the western boundary. Adjoining the eastern boundary is a single storey residential property including detached garage and garden known as 'The Bungalow' Baileys Close Farm, Pasture Lane. The whole of the site is located within the Green Belt. The site is located approximately 1.65 km to the west of the London Luton Airport boundary.

## 4.2 Proposal

- 4.2.1 The proposal seeks full planning permission for the redevelopment of the site to remove all existing buildings and hard surfacing and for the construction of 14 dwellings and associated new access road, landscaping and ancillary works. The housing scheme will comprise of 2 x 2 bedroom bungalows, 6 x 2 bedroom houses and 6 x 3 bedroom houses. All of the houses would be two storey with the first floor accommodation contained partly within the roof space. The development proposes 28 allocated parking spaces for the dwellings and 7 visitor parking spaces.

In terms of layout a new vehicular and pedestrian access is proposed off Pasture Lane closing the existing access point which is on a bend in the road. The vehicular access into the site extends through the central area of the site with a turning head in the middle of the site. The new houses will face onto the central access road in the form of six pairs of semi-detached houses. The bungalows would face onto Pasture Lane. Residential gardens will generally adjoin the site boundaries. Six visitor parking spaces are located off the central access road. The proposal includes additional planting around and within the site and the part removal of the conifer tree line along the western boundary.

All of the dwellings are semi-detached. The houses would have part hipped pitched roofs with the ridge heights for the houses varying between 6.3m above ground level to 7.4m. The maximum height of the bungalows facing Pasture Lane would be 5.1m. The external materials consist mainly of dark stained timber cladding for the elevations with farmhouse red or similar roof tiles. All of the houses would have front and rear through eaves dormer windows.

A new pedestrian footway along Pasture Lane linking the site with the footway adjacent the village recreation ground is proposed.

The following documents are submitted with this application:

- ☐ Planning Statement
- ☐ Design and Access statement
- ☐ Transport Assessment
- ☐ Transport Statement Addendum (June 2019)
- ☐ Arboricultural report
- ☐ Drainage strategy (updated to June 2018)
- ☐ Landscape and Visual Appraisal
- ☐ Land Contamination Phase 1 & II reports
- ☐ Noise Impact Assessment (plus further response to NHDC EHO officer comments)



### 4.3 Key Issues

#### 4.3.1 The key issues are considered to be as follows:

- ☐ The principle of the development including the effect on the openness and purposes of the Green Belt
- ☐ Design and appearance
- ☐ Living conditions of existing and prospective occupiers
- ☐ Access and parking considerations
- ☐ Other matters (Ecology, Flood risk, Contamination)
- ☐ Section 106 matters
- ☐ Planning balance and conclusion

#### 4.3.2 The principle of the development

#### 4.3.3 Policy 2 of the NHDC Local Plan (Saved Policies) states that:

*In the Green Belt, as shown on the Proposals Map, the Council will aim to keep the uses of land open in character. Except for proposals within settlements which accord with Policy 3, or in very special circumstances, planning permission will only be granted for new buildings, extensions, and changes of use of buildings and of land which are appropriate in the Green Belt, and which would not result in significant visual impact.*

#### 4.3.4 In this case the site is considered previously developed land with several buildings currently on the site and therefore the site already has an impact on the openness of the Green Belt. The key issue is whether, in terms of an assessment against Policy 2, the development meets the criteria set out in paragraph 145 g) of the NPPF and therefore constitute appropriate development in the Green Belt. This analysis is set out below in paragraph.

#### 4.3.5 Policy SP5 of the Submission Local Plan (Countryside and Green Belt) states that the Council : *Will only permit development proposals in the Green Belt where they would not result in inappropriate development or where very special circumstances have been demonstrated;*

Again an assessment as to whether the development complies with Policy SP5 relies on whether it is deemed appropriate development having regard to the previously developed nature of the site.

#### 4.3.6 The National Planning Policy Framework states in paragraph 145 that the construction of new buildings in the Green Belt should be regarded as inappropriate with exceptions including :

*g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*

- not have a greater impact on the openness of the Green Belt than the existing development; or*
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to*

*meeting an identified affordable housing need within the area of the local planning authority.*

- 4.3.7 The definition of 'Previously Developed Land' in Annex 2 of the Framework states PDL as being:

*'Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.'*

- 4.3.8 There is little doubt that the majority of the existing buildings on the application site meet the definition of previously developed land. Certainly the block and rendered single storey buildings and brick tower meet the definition in my opinion and there is a large amount of hard surfacing on the site. The conclusion of whether the proposal represents inappropriate development depends on an assessment of whether or not the proposed development would be in compliance with the second part of paragraph g) of paragraph 145 of the NPPF as set out above. This is because the developer is proposing to make a financial contribution towards affordable housing in the district. The test here is whether the development would cause substantial harm to the openness of the Green Belt.
- 4.3.9 The applicant has provided an existing sections drawing (PL15) which shows that the highest building on the site is the redundant brick tower at 6.7m tall. One other building is just over 6.0m high. The rest of the buildings on site are 3.7m or lower. All of the new houses to be erected on site (with the exception of the pair of semi-detached bungalows) are 6.3m or over in height. The volume and footprint figures provided by the applicant show a reduction on the footprint and volume previously proposed for 18 dwellings (ref: 17/04392/FP) but an increase in volume by 1718 cubic metres (i.e. 48.4%) and a small increase in footprint of 100 sqm (9%).
- 4.3.10 The above illustrates that there would be more built development on the site than the existing situation and a significant increase in height when comparing existing building heights to that now proposed.
- 4.3.11 The current site layout is that the site is relatively open in the central area (the main buildings being located in the northern and southernmost parts of the site. Compared with this the proposed layout shows an almost continuous built up form of development across the site from north to south.
- 4.3.12 The resultant impact of the increase in height and spread of buildings across the site together with the segregation of the site into individual gardens with resultant boundary fencing would reduce openness of the site and the scale of the development would be particularly obvious from both Pasture Lane and public footpath No. 4 which runs immediately along the western boundary.

- 4.3.13 The application site is clearly separated from Breachwood Green village and in open countryside being surrounded by open fields in agricultural use (with the exception of the adjacent bungalow). The proposed development would introduce a modern two storey housing development significantly at odds with this open and agricultural character, increasing urban sprawl and encroachment into the countryside. This would be contrary to the fundamental aims of the Green Belt as set out in paragraph 133 of the NPPF and the third purpose in paragraph 134.
- 4.3.14 It is accepted that the applicant has attempted to address the impact of the proposed development on the openness of the Green Belt and the reductions in footprint and volume over the previous application are acknowledged. However in my view the reduction in scale of the development has not gone far enough despite several requests for the number of residential units to be reduced further in order to provide a looser and more appropriate scale of development that better respects the open character of the area.
- 4.3.15 Paragraph 79 of the NPPF states that planning policies and decisions should avoid the development of isolated homes in the countryside unless several circumstances apply including 'the development would re-use redundant or disused buildings and enhance its immediate setting'. The removal of a non-conforming and unsightly business use would undoubtedly be a major advantage of the scheme however the quantum of development and its scale outweighs the benefit of the removal of the current industrial use in my opinion.
- 4.3.16 It is concluded therefore that the proposal would reduce openness and be contrary to one of the purposes of the Green Belt. The proposal is harmful to the Green Belt (paragraph 144) and does not meet the criteria set out in the seventh bullet point of paragraph 145 g) in that it would cause substantial harm to the openness of the Green Belt. The development would also be contrary to Policy 2 of the Saved local Plan and Policies SP5 of the emerging local plan.

**4.3.17 Design and Appearance**

- 4.3.18 Any re-development on the application site, if appropriate in planning policy and environmental terms, should respond to the agricultural landscape and the rural character of the countryside.
- 4.3.19 Paragraph 127 of the Framework requires decision makers to ensure that new developments:
- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
  - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
  - c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
  - d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
  - e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and*

*support local facilities and transport networks; and  
f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users<sup>46</sup>; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

In addition paragraph 130 of the Framework is also relevant to the consideration of this application in that it advises:

- ❑ *Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.*

4.3.20 This revised application following the refusal of the previous scheme for 18 dwellings has endeavoured to overcome the previous issues raised with regard to the excessive density and overtly urban appearance of the scheme primarily through a reduction in number of units, reduction in height and the use of cladding to promote a 'barn like' appearance more in keeping with the rural character of the area. Whilst these changes are acknowledged it is considered that the development would still be out of keeping with this rural location beyond the village boundary. Essentially the proposed development would still introduce a small suburban housing development into a rural location beyond the built up area of the adjacent village. The vast majority of the development is still two storey albeit the first floor accommodation is partly within the roof spaces. Although a 'barn like' appearance is sought with the inclusion of cladding as the main external material, the provision of hipped roofs, through eaves dormers and the domestic fenestration pattern together with associated garages, residential access road and boundary fencing all combine to result in a distinctly residential cul-de-sac of a density and appearance that is more akin to a built up area rather than this rural location.

4.3.21 It is agreed that the industrial nature of the existing site and its untidy and semi-derelict appearance detracts from the character of the area. This does not provide any excuse for the redevelopment of the site with an equally inappropriate form of development that does not respond to local character, the surrounding rural environment and the rural landscaped setting.

4.3.22 In terms of landscape effects it is considered that the height, scale and quantum of development would be harmful to the open and rural character of the landscape. Whilst it is appreciated that the surrounding landscape is of no special quality or value the application site is passed by walkers, cyclists, horses riders and motorists and the urbanising effect and encroachment into the countryside would be clearly apparent with the proposed development.

4.3.23 By reason of the number of dwellings proposed, their excessive height, overtly domestic appearance and the generally urban form, the development would have a harmful effect on the character and appearance of the area. Furthermore the proposed development would have significant adverse landscape and visual effects due to its separation from the village to the north and its prominent location adjacent to a public footpath and rural lane. As such the proposals would not comply with Policy 57 of the adopted local plan or Submission Local Plan Policies SP1, SP9 and D1. The proposals

would not enhance the quality of the area and would constitute poor design failing to comply with paragraphs 127 and 130 of the National Planning Policy Framework.

#### 4.3.24 Living conditions

- 4.3.25 There are two main issues that may affect the living conditions of proposed residents on this site – airport safety and noise.

##### Airport safety

The site is located close to the flight path of London Luton Airport and partly within the airport Public Safety Zone. Circular 01/2010: Control of Development in Airport Public Safety Zones (PSZ's) provides guidance to Local Planning Authorities on the siting of developments within PSZ's. The guidance states at paragraph 10:

*'There should be a general presumption against new or replacement development, or changes of use of existing buildings, within Public Safety Zones. In particular, no new or replacement dwelling houses, mobile homes, caravans or other residential homes should be permitted. Nor should new or replacement non-residential development be permitted'*

The applicant has sought to address this concern by stating that the number of future residential occupiers is likely to be similar to the number of people who may be employed on or visit the site as part of an on-going industrial use. Part 11 (iii) of the Circular does allow for development within the PSZ that involves *'a change of use of a building or of land which could not reasonably be expected to increase the number of people living, working or congregating in or at the property or land beyond the current level or, if greater, the number authorised by the current permission'*.

The current use is redundant and unlikely to be attractive to a future business use because of its isolated location and the investment required to bring it back into commercial use therefore there is some doubt as to whether the comparison with the number of new occupiers and those that could be employed at the site is a realistic argument. That said, the site is partly outside of the PSZ and at the very end of the PSZ where the risk of accidents from aircraft is much less than the western end of the PSZ nearer the airport boundary.

London Luton Airport have not objected to the development from a public safety perspective and therefore together with the potential permissive use of the site as a swap for the existing albeit redundant industrial use as allowed for in Circular 01/2010, it is considered that a refusal of planning permission on grounds of public safety could not be sustained.

##### Noise

The site is located within the current Noise Contours for London Luton Airport as set out in the airports' Noise Action Plan 2013 – 2018. In fact, the application site is within one of the higher noise categories (dB – sound pressure level) centred around the runaway take-off and landing zones. The NAP states at Action 17 in the document :

*'Discourage residential development close to the airport boundary or areas affected by aircraft noise, in liaison with Local Authorities.'*

4.3.26 The Council's Environmental Health officers have considered the application proposals in some detail and have been provided with the additional comments of the applicants' consultants (Cass Allen) in respect of both internal noise and external noise. The Environmental Health officers advise that insufficient monitoring has been undertaken to demonstrate that the development site would not be unduly affected by aircraft noise and that in any case whatever sound attenuation measures are adopted the site could not be future proofed against increasing noise levels. London Luton Airport expands over the next few years.

4.3.27 Paragraph 180 of the NPPF is a relevant consideration. It states:

*Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

*(a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life [60](#);*

Footnote 60 refers to the Noise Policy Statement for England (March 2010)

4.3.28 The Council's Environmental Health Manager refers to the noise survey monitoring results in the submitted noise survey where, during the survey period, maximum noise levels reached between 80 dBA and 90 dBA which appear to be well above World Health Organisation (WHO) noise guidance targets for both internal and external noise levels.

4.3.29 The applicants' noise consultants refer to WHO/ BS8233 guidance which states that it is desirable that noise levels in external amenity areas of residential developments do not exceed 50 dB LAeq and that 55 dB LAeq,T should be regarded as an upper guideline value. BS8233 recognises however that

*"...these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited."*

The fact is however that the application site is not located in an urban area where elevated noise levels would be expected. Furthermore, the site is not an allocated site for housing in the emerging local plan and is not required to meet the Council's housing needs over the Plan period. There is therefore no presumption that the site is desirable for housing development and even if it were the provision of a relatively small number of housing units would not make any material difference to the Council's housing needs to justify the development on a site which is exposed to high and increasing noise levels.

- 4.3.30 The Council's Environmental Manager points out the relevance of the Noise Policy Statement for England (NPSE) as referred to in the footnote to paragraph 180 of the NPPF. The Manager states that it sets out a long-term vision to 'promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development'. It is supported by three aims:
1. 'Avoid significant adverse impacts on health and quality of life'
  2. Mitigate and minimise adverse impacts on health and the quality of life, and
  3. Where possible, contribute to the improvements of health and quality of life.'

The Environmental Health Manager comments:

*'The NPSE provides guidance of defining the 'significant adverse effect' using the concept, amongst others the Significant Observed Adverse Effect Level (SOAEL). This is the level above which significant adverse effects on health and quality of life occur, which includes the onset of cardiovascular health effect. It is generally accepted that in terms of aircraft noise the SOAEL for night time is 55dB and the daytime level is 63dB. As mentioned above this site experiences noise levels above these figures.'*

- 4.3.31 The Environmental Health Manager advises that the Council's Environmental Health team have no jurisdiction in terms of aircraft noise under the statutory nuisance provisions in The Environmental Protection Act 1990. Should a resident be disturbed by aircraft noise the Council cannot take any action to resolve the issue and the only recourse of action for a resident would be to complain to the Civil Aviation Authority at which point it is too late to prevent / resolve an issue of disturbance from aircraft noise.
- 4.3.32 Given all of the above it is considered that the proposed development would fail to achieve an adequately high standard of amenity for future occupiers of the proposed development failing to meet the social and environmental roles of sustainable development required by the NPPF.
- 4.3.33 In terms of living condition of existing residents the occupiers of 'The Bungalow' are unlikely to be significantly impacted by the proposed residential development given the separation distances landscaping shown on the site layout plan.
- 4.3.34 **Access and parking considerations**
- 4.3.35 The proposed development will be served by a new access off Pasture Lane. The access road would be 5.5 metres in width with a 1.25m wide footpath on the western side to link with a new footpath onto Pasture Lane.
- 4.3.36 A major new element of the scheme following discussions with the LPA is the provision of a new footpath link into the village north of the application site. This has been proposed to overcome the fundamental objection to the scheme raised by the Highway Authority based on the lack of sustainable travel infrastructure. The potential footway link is shown at **Appendix A**

- 4.3.37 The developer has offered to provide / fund the new section of footway between the site and Breachwood Green in addition to funding towards an upgrade of public footpath 004 Kings Walden which runs alongside the western boundary of the site. This commitment on behalf of the developer is a significant offer which I believe overcomes the principle objection of the Highway Authority that the development is not compliant with the adopted Local Transport Plan (LTP4). The applicant is also willing to accept a travel plan condition if permission is granted.
- 4.3.38 The Highway Authority continue to object to the development on a number of detailed areas including the specification of the footway (width and separation distance from the highway), cost of the footway and visibility splays. Whilst these concerns are understood they are capable of resolution in my opinion subject to further negotiation and amended plans and ultimately will be subject to a Section 278 Agreement under the Highway Act. Although Pasture Lane is classified as being subject to the national speed limit (60mph) in reality, because of the physical nature of the lane traffic speeds are low and also infrequent. Indeed, one has to consider the traffic impact of the existing authorised use of the site which when operational uses an unsafe access point on a bend with poor visibility and generates HGV movements on a rural lane.
- 4.3.39 The development will provide 28 parking spaces for the houses and 7 visitor parking spaces. All of the garages meet the required minimum internal dimensions of 7m x 3m. I consider that the level of parking provision meets the requirements of the currently adopted Supplementary Planning Guidance 'Vehicle Parking Standards at New Development (2011)..
- 4.3.40 There is a limited bus service from the village to Hitchin and Luton (Bus 88) and only a limited range of services in the village. However the village is classified as a Category A village in the emerging local plan as it has a primary school and some other facilities (e.g. public house, village hall, church and recreation ground). Nearby Kings Walden has a shop, public house and church.
- 4.3.41 The NPPF encourages new development *'to be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes'*. It is considered that with the package of transport improvements in support of the development the site will be reasonably well connected to local services and facilities to encourage sustainable transport trips. The NPPF does recognise however that *'opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in both plan-making and decision making'*.

Furthermore, the NPPF states in paragraph 109 that:

*'Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.*

The applicant has attempted to address the concerns of the highway authority through the footpath link and additional measures set out in the submitted Transport Statement Addendum. Whilst some further work is required on refining the footpath details and other highway matters it would appear that such issues are capable of a satisfactory resolution.



In conclusion on highway matters, it is considered that the development can promote sustainable transport modes and achieve safe and suitable access to the site. Adequate parking can be provided on site and suitable arrangements are proposed for refuse collection. Overall, it is considered that the development is acceptable in highway terms.

#### 4.3.42 **Other matters**

#### 4.3.43 Affordable Housing

The applicant had originally not intended to provide any affordable housing as part of this development. Emerging local plan Policy HS2 would require 25% of the units to be affordable (4 units). An affordable housing viability report was submitted to justify this position however the Council's specialist affordable housing consultants have reviewed this document and consider that there is sufficient development value in the site to permit a policy compliant level of affordable housing on site or allow a substantial financial contribution in-lieu of affordable housing provision. The applicants consultants have disputed some of the financial assumptions made by the Council's consultants and somewhat of an impasse has been reached on this issue. Nonetheless the applicant has agreed to make an off-site affordable housing contribution of £261,469.00.

The Council's Housing Manager has stated a strong preference that affordable housing should be provided on site in line with Policy HS2 and paragraph 62 of the NPPF. This supported by the fact that a recent Housing Needs Survey (2014) carried out by Kings Walden Parish Council has revealed a need for 12 units over a 5 year period for varying tenures. This need has not yet been met in the Parish.

It is apparent that there is some degree of doubt over the financial viability of the delivery of housing on the application site given the conflicting opinions on residual land value and development costs overall. Therefore, as a way forward and given the substantial sum offered by the applicant it seems reasonable that a financial contribution could be accepted provided it is ring fenced, in the first instance, within a Section 106 Agreement towards affordable housing in Kings Walden Parish. Emerging Local Plan site KW1 on Heath Road in Breachwood Green is one such site that could benefit from such a contribution.

#### 4.4.44 Ecology

Given the previous commercially active condition of the site and the amount of hard surfacing and buildings it is likely to be of low ecological value. The development provides an opportunity for net gains in biodiversity and could incorporate enhancement measures. As such there are no specific objections on ecological grounds.

#### 4.3.45 Flood Risk

The Lead Local Flood Authority has assessed the revised Matrix Transport and Infrastructure Consultants Limited Drainage Strategy dated June 2018 and raises no objections subject to the imposition of suitable conditions. The previous objection of the LLFA on flood risk grounds has therefore been overcome.

#### 4.3.46 Contamination

No objections are raised to this application by the Council's Environmental Protection officer as noted above subject to appropriately worded conditions.

#### 4.3.47 **Section 106 matters**

4.3.48 The NPPF advises that planning obligations should only be used where it is not possible to address impacts through a planning condition and that they should be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

4.3.49 In this case the development is for 14 dwellings which is above the threshold at which the Government considers planning obligations can be sought. A Section 106 Agreement is considered necessary to address a number of infrastructure related matters involving financial contributions and the provision of affordable housing.

4.3.50 The applicant has agreed to a Heads of Terms document that covers the following matters

##### Herts County Council

- ☐ Education contributions – Primary £23,102, Secondary £21,782
- ☐ Youth services £508.00
- ☐ Fire Hydrants
- ☐ Sustainable transport (footpath link to village and Public footpath 004 improvements)

##### North Hertfordshire District Council

- ☐ Affordable Housing (financial contribution £261,469.00)
- ☐ Playground equipment at recreation ground, Breachwood Green (£8,672.80)
- ☐ Waste and recycling collection (£994.00)

4.3.51 The above financial contributions are based on the County and District Council's standard charges and specific projects and services and in the case of affordable housing an appropriate level of contribution in lieu of on-site provision. They address, in proportion to the scale of the development, the limited local capacity for primary and secondary education, to mitigate the impact on local recreational facilities and to assist in meeting affordable housing need in the parish. The contributions also provide for improvements to the existing pedestrian routes and would encourage the use of sustainable transport modes.

The planning obligations provisions are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably relate to it in scale and kind. The tests in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 are therefore met.

4.3.52 A full draft Section 106 agreement has not yet been received however the essential elements of such a document are agreed by the applicant in the agreed draft 'Heads of Terms'. As significant progress has been made on Section 106 matters it would not be appropriate to refuse planning permission on the lack of a formal legal agreement.

#### 4.3.53 **Planning balance and conclusion**

The proposal is contrary to policies in the current saved local plan and the emerging local plan which is at an advanced stage. The current local plan is however out of date and it does not address the housing needs of the district. The emerging plan is yet to be adopted and therefore, although at an advanced stage, significant weight cannot yet be attributed to it. As such and in line with paragraph 14 of the NPPF the 'tilted balance' in favour of granting planning permission should apply unless specific policies in the NPPF and the local plan indicate development should be restricted. Footnote 9 of paragraph 14 includes policies relating Green Belt within which this site is located. As such the tilted balance in favour of the development is not engaged.

4.3.54 For the reasons set out above the proposals represent inappropriate development in the Green Belt, because even though the development is sited on previously developed land it would cause substantial harm to openness and therefore be contrary to the purposes of the Green Belt and therefore by definition be harmful to the Green Belt.

4.3.55 No very special circumstances have been advanced by the applicants to justify inappropriate development in the Green Belt – primarily due to the fact that the applicants consider that the development is on previously developed land that would not cause substantial harm to openness. The submitted volumetric analysis and comparison of the development to the height of existing buildings on the site clearly demonstrates that the development does not meet the seventh bullet point of paragraph 145 of the NPPF and is therefore inappropriate. I attribute significant weight to the harm to the Green Belt in this regard.

4.3.56 Significant progress has been made to resolve the objections raised by the Highway Authority through agreement to provide a footpath link to the village and upgrade public footpath 004 as well as the provision of a Green Travel Plan. The majority of journeys to and from the site would still be likely to be by private car however Government policy recognises that: *'opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in both plan-making and decision making'*. I attach limited weight to the concerns raised over the sustainability of the site.

4.3.57 The applicants noise consultants state that *'the site is suitable for the development in terms of noise levels'* However the submitted noise impact assessment confirms that measured noise levels at the site are between 66dB and 85 dB, significantly above World Health Authority guidelines for residential development. The Council's Environmental Health officer considers that even with high specification glazing and closed ventilation systems (i.e. all windows permanently closed) the living conditions would be unacceptable particularly as the airport expands in the future and noise levels increase. Paragraph 180 of the NPPF reinforces the need to ensure that new

development provides acceptable living conditions. I consider that the concerns of the LPA in respect of noise carries significant weight.

4.3.58 The proposed development is of an urban density and form detracting from the rural character of the lane and would overall be harmful to the character and appearance of the locality. I consider this adverse impact attracts medium weight.

4.3.59 The NPPF advises that inappropriate development should not be approved except in very special circumstances. In this case the benefits of delivering new homes are outweighed by the harm to the Green Belt and the other identified unacceptable aspects of the development in terms of the harm to the character and appearance of the area and noise impact. In particular the development would fail to meet the social and environmental dimensions that represent sustainable development. I conclude that the harmful effects of the development are far outweighed by the limited benefit of delivering new homes and therefore that planning permission should be refused.

## 5.0 **Legal Implications**

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

## 6.0 **Recommendation**

6.1 That planning permission be refused for the following reasons:

1. The application site is within the Green Belt as identified in the North Hertfordshire District Local Plan No. 2 with Alterations (Saved Policies, 2007) wherein permission will only be given for the erection of new buildings for agricultural purposes, other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. The proposed development is an inappropriate form of development in the Green Belt and therefore is unacceptable in terms of Policy 2 of the North Hertfordshire Local Plan No. 2 with Alterations (Saved Policies, 2007) and the guidance in Section 13 of the National Planning Policy Framework. The proposed development cannot be justified in terms of the purposes specified and no very special circumstances have been demonstrated which may justify an exception to be made for such development in the Green Belt.
2. By reason of the number of dwellings proposed, their excessive height, overtly domestic appearance and the generally urban form, the development would have a harmful effect on the character and appearance of the area. Furthermore the proposed development would have significant adverse landscape and visual effects due to its separation from the village to the north and its prominent location adjacent to a public footpath and rural lane. As such the proposals would not comply with Policy 57 of the adopted local plan or Submission Local Plan Policies SP1, SP9 and D1. The proposals would not be sympathetic to local character or be in keeping with the surrounding rural

environment contrary to the advice in section 12 of the National Planning Policy Framework.

3. The proposed development would be located within the London Luton Airport Noise Contour area which is subject to high noise levels from aircraft movement. As such, the development would be likely to result in a poor standard of residential amenity to the occupiers of the proposed dwellings contrary to the provisions of Policy 57 of the North Hertfordshire District Local Plan and Section 8 and 15 of the National Planning Policy Framework.

### **Proactive Statement**

Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Council acted proactively through positive engagement with the applicant in an attempt to narrow down the reasons for refusal but fundamental objections could not be overcome. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.