

IN THE MATTER OF LAND AT BROOK FARM ADJOINING 451-469 DAWS HEATH ROAD,
HADLEIGH, ESSEX
APP/M1520/W/24/3351658

CLOSING SUBMISSIONS ON BEHALF
OF CASTLE POINT BOROUGH COUNCIL

1. This is an appeal against refusal of permission for 173 houses and associated infrastructure in the Metropolitan Green Belt. Although the government has made some specific changes to the policy on green belts, it is important to appreciate the NPPF continues to affirm that the Government attaches great importance to Green Belts and that their fundamental aim is to prevent urban sprawl by keeping them permanently open¹. A development of this scale is the antithesis of keeping the Green Belt permanently open. As has been shown at this inquiry and will be summarised in these closing submissions, neither the more recent NPPF changes nor longstanding policy on very special circumstances justify this development in the Green Belt.

2. At the outset of this inquiry the Inspector helpfully identified three main issues:
 - a. Whether the proposal is inappropriate development in the Green Belt;
 - b. The effect on the openness of the Green Belt; and
 - c. Whether harm to the Green Belt is clearly outweighed by other considerations.

3. These closing submissions will address those points in that order.

¹ NPPF §142.

WHETHER THE PROPOSAL IS INAPPROPRIATE DEVELOPMENT IN THE GREEN BELT

4. The proposal in this case is for the introduction of 173 houses and associated development into the Green Belt. Development of that scale and type is undoubtedly inappropriate in the Green Belt unless one of the exceptions in the NPPF applies². While around 0.12 of a hectare of the site is previously developed land³, it is proposed to develop 6.4 hectares of the Site⁴. In those circumstances the Appellant could not argue, and have wisely not attempted to argue, that the proposal could fall within any of the exceptions set out at paragraph 154 of the NPPF.
5. Instead in seeking to argue that the development is not inappropriate, the Appellant's evidence focusses on the newly introduced category of grey belt. NPPF paragraph 155 now provides that the development of homes should not be regarded as inappropriate on grey belt land in certain circumstances, which it is agreed are met here⁵. Therefore the crucial question between the parties is whether the Site can be regarded as grey belt.
6. Again there is no dispute that the small area of PDL on the Site would be regarded as grey belt. However that, by itself, would not prevent the proposed development from being regarded as inappropriate⁶.
7. The real question between the parties, therefore, is whether the Site strongly contributes to Green Belt purposes (a) and (b)⁷, that is to say whether the Site strongly contributes to checking the unrestricted sprawl of large built-up areas and to preventing neighbouring towns merging into one another.

² NPPF §154 "development in the green belt is inappropriate unless one of the following exceptions applies' (CD 7.33)

³ Around 1257m², PG proof §6.6 (CD 12.5)

⁴ PG proof §6.7 (CD12.5)

⁵ DG XIC.

⁶ MW XX

⁷ DG XIC, NPPF glossary and §143

8. The first question is whether Daws Heath can be regarded as a ‘large built up area’ or a ‘town’ for these purposes. It is common ground that there is no definition of large built up area or town or criteria for what may constitute a large built up area or town in the NPPF⁸, therefore whether Daws Heath meets those descriptions must be a matter of judgment. While it is right, as put to DG, that the NPPF knows the difference between a town and a village, the fundamental point is that it is still a matter of judgment what constitutes a town for the purposes of paragraph 143 NPPF. It is ultimately a planning judgment to be made in the context of a proper assessment of policy and with respect the answer to the question is not assisted by interrogating the views of local residents as to whether Daws Heath should be considered a large built up area or a town.

9. Mr Gibbs argues based on the description of Daws Heath in the Issues and Options Consultation for the emerging Local Plan⁹ that these categories are not met. That is a flawed approach. The Issues and Options Consultation Document was not seeking to assess whether Daws Heath should be considered a large built up area or a town for the purposes of the application of paragraph 143 of the Framework¹⁰. The only document that has sought to assess whether Daws Heath is a large built up area or a town for these purposes is the Green Belt Review (“GBR”)¹¹.

10. In assessing whether Daws Heath should be considered a large built up area and a town for the purposes of paragraph 143 of the NPPF the GBR very rightly focusses on the spatial context of Castle Point Borough Council¹². In the absence of definition or set criteria it is essential to look at local context. The GBR points out that while there are four large towns in Castle Point, Daws Heath is also a prominent isolated settlement in the Borough with a clear settlement boundary, that has long been recognised as a settlement in its own right, and that in the

⁸ DG XX, PG XX

⁹ CD 7.21, see PG proof §7.8-§7.11 and §7.26-7.27

¹⁰ PG XX

¹¹ CD7.1

¹² XX DG

context of Castle Point it operates as a large built up area¹³ and should be regarded as a distinct neighbouring town¹⁴. Contrary to what was suggested to DG in XX therefore it is perfectly clear from the GBR why the authors of that document considered that Daws Heath constituted a town and a large built up area. These judgments are perfectly reasonable: there is no dispute that Daws Heath is a built up area¹⁵, whether it is a *large* built up area is a matter of judgment. Similarly there is no magic formula for what constitutes a town for these purposes.

11. Not only are the judgments of the GBR manifestly reasonable, it is also clear that the methodology of the GBR (necessarily including its approach to what is a large built up area/town) was accepted by the Inspector examining the 2019 Local Plan¹⁶. Given the importance of Green Belt to that plan if he had not accepted the methodology he would have made that plain¹⁷. Two subsequent planning inspectors examining proposals in the circle of Green Belt surrounding Daws Heath have accepted the relevance of purpose (b) and therefore have clearly accepted the conclusion of the GBR that Daws Heath constitutes a town for these purposes¹⁸. The approach taken in Castle Point's GBR is not some form of aberration in Castle Point but is consistent with for example the approach taken in the Tandridge green belt review put forward by PG¹⁹, and accepted by the Inspector in that instance²⁰.

12. There is no dispute between the parties that significant weight can be put on the evidence base for the 2019 plan, and MW specifically confirmed in XX that his view that the evidence base for the plan can be afforded significant weight²¹ specifically included the GBR.

¹³ CD 7.1 §5.26 and §5.27.

¹⁴ CD 7.1 §5.34

¹⁵ PG XX

¹⁶ CD 6.1 §40

¹⁷ XX PG

¹⁸ Land South of Daws Heath Road (CD 8.1 §28) Land East of Rayleigh Road (CD 8.2 §25).

¹⁹ CD12.6 PG proof PDF page 47

²⁰ PG XX

²¹ MW proof § 7.164, cross referencing GBR at 7.161 (CD 12.6)

13. It is worth bearing in mind that if the Appellant and PG are right that Daws Heath cannot be considered a large built up area or a town for these purposes it would mean that the Green Belt land around Daws Heath would now all be regarded as grey belt, which has very significant implications for the control of development within the Green Belt in Castle Point and across the country if similar arguments were made.
14. The Appellant sought to rely on the appeal decision for Land at Leighton Road, Stanbridge²². That appeal decision does not take the point any further-the parties were agreed that the settlement in question was not a town and that conclusion was consistent with the approach taken in the green belt study²³. Neither of those points apply here.
15. Once the suggestion that the Site cannot as a matter of definition contribute to purposes (a) and (b) falls away it will be seen that the Site does in fact strongly contribute to those purposes. That was the conclusion of the GBR. The GBR identified clear, objective criteria for considering the contribution of parcels of land to purposes (a) and (b)²⁴. Mr Gibbs made no criticism (save as already discussed) of those criteria. Applying those criteria the GBR concluded that parcel 8 which includes the Site strongly contributes to purpose (a) and very strongly contributes to purpose (b)²⁵.
16. The GBR also reviewed the contribution that individual proposed site allocations made to purposes (a) and (b). It did this by assuming that the whole of a site would be developed and then assessing what harm would be caused to those purposes by that development²⁶. This assessment is therefore a proxy for what contribution that site makes to those purposes²⁷. The GBR applied criteria to assess the harm

²² CD 8.20

²³ §8

²⁴ CD 7.1 §5.24 and table 3 at page 26, §5.36 to §5.38 and table 4 at §5.40

²⁵ CD 7.1 page 86

²⁶ CD 7.2 §6.7

²⁷ PG XX

to the purposes from the development of a site²⁸ and again save as discussed PG took no criticism of those criteria.

17. The upshot of all of the above is that when assessing the current Site plus two fields to the south the GBR found very strong harm to purposes (a) and (b)²⁹. Following the request of the 2019 local plan inspector the assessment was revisited³⁰ excluding the two southern fields. Here the GBR found strong harm to both purposes (a) and (b)³¹. It is notable that what was being assessed in the last iteration of the GBR is effectively the same as the proposed development area in the current application³². Again, save as discussed above PG made no criticism of the GBR's assessment to reach those conclusions.

18. There is therefore clear evidence that the Site contributes strongly to both purposes (a) and (b).

19. Despite that, PG sought to argue the Site did not strongly contribute to purpose (a) because the development would be a natural fit in the landscape and form a logical pattern of development³³. The relationship of the Site to the existing built up area was considered as part of the GBR³⁴. It noted that the proposal would alter the Green Belt boundary at this location from which is aligned against residential curtilages to one which follows existing field boundaries and would be aligned against the road and residential curtilages. PG agreed that this is the effect of the change.

20. PG also sought to argue that the proposal was a natural fit in the landscape because the southern boundary would align to some extent with the Solby Wood development. The relationship with the Solby Wood development was taken into account in the GBR, and in any event while it may produce a line on the map there

²⁸ CD 7.2 §6.29 table 1 and §6.38 table 2

²⁹ CD 7.2 page 69/

³⁰ CD 7.3 page 3

³¹ CD 7.3 page 18

³² XX PG. There is a slight difference in the northern boundary but not one likely to be material.

³³ PG proof §7.17

³⁴ CD 7.3 pg 20

would be nowhere on the ground where it would be possible to appreciate this phenomenon³⁵.

21. PG sought to bolster his argument that the proposal would be a natural fit in the landscape by arguing that the proposal would increase permeability between the built up area of Daws Heath and the Site. When it is appreciated that the only two ways to access the Site will be via the main entrance to the south of the built up area of Daws Heath and via a footpath emerging on Bramble Road to the east of the built up area of Daws Heath it will be seen that the proposal will not increase permeability in any direct sense between Daws Heath and the proposed development.

22. In the circumstances the clear view of the GBR that development of this Site, and in particular of the developable area of this Site, would cause strong harm to purpose (a), and therefore that Site strongly contributes to purpose (a) should be preferred.

23. In relation to purpose (b) PG relied on the point that the complete merging of Hadleigh and Daws Heath would not occur as a result of the delivery of the developed part of the site³⁶. Yes, it is right that there would still be some area of land between Daws Heath and Hadleigh but that does not mean that the Site does not contribute to purpose (b) or that developing it would not cause harm to purpose (b). A site does not only contribute to purpose (b) if it is literally the last field or the last metre of land between two towns³⁷. Where there are two fields in the gap between two towns both fields are likely to contribute to preventing those neighbouring towns merging into one another. How strongly they contribute and how much harm would be caused by development of one of those fields depends on the circumstances on the ground, as explicitly recognised by the criteria of the GBR which sought to avoid a 'scale rule' approach but instead look at matters in

³⁵ PG XX

³⁶ PG proof §7.32 (CD12.5)

³⁷ PG XX.

the round³⁸. Taking that more nuanced approach the GBR review concluded that the development of the Site would cause strong harm (and therefore the Site strongly contributed) to purpose (b). For the reasons given in that GBR (not criticised by PG) that conclusion should be preferred.

24. As a counter to the argument that harm to purpose (b) is likely to be limited unless the gap between two settlements is completely filled, in Land East of Rayleigh Road the Inspector found significant harm to purpose (b) because of the reduction in gap between Daws Heath and Thundersley notwithstanding that the gap was not wholly filled³⁹.

25. It was argued in XX of DG that Inspector Lewis' conclusions on the proposal to remove the Site from the Green Belt in the 2019 plan somehow showed that there would be limited harm to purposes (a) and (b) and that this Inspector would need to disagree with the conclusions of Inspector Lewis to find strong harm to purposes (a) and (b)⁴⁰. While DG accepted that proposition, a careful reading of what Inspector Lewis said shows that is not the case. As would be expected from someone examining a local plan rather than conducting a section 78 appeal, Inspector Lewis' comments on the site are high level⁴¹. He concludes that there would be enough of a gap between Daws Heath and Hadleigh remaining after the development that complete coalescence would not occur and that there would be a defensible boundary to the Green Belt. He (entirely understandably) makes no attempt to use those conclusions to analyse the harm that would be caused to purposes (a) and (b) from the development of the Site-he is simply silent on the point, although he did **expressly** recognise that development of the Site would cause Green Belt harm.

³⁸ CD 7.1 §5.38

³⁹ CD 8.2 §25, §27

⁴⁰ Conclusions found at CD 6.1 §94

⁴¹ CD 6.1 §94

26. In the circumstances it would be entirely consistent with the conclusions of Inspector Lewis to find that the Site does strongly contribute to purposes (a) and (b) and therefore does not fall within the definition of grey belt.

27. For all of those reasons the Site strongly contributes to purposes (a) and (b) and therefore is not grey belt. Although it is the Council's case that the Site strongly contributes to both purposes (a) and (b), strictly in order to be excluded from the definition of grey belt it is only necessary that it strongly contributes to one of those purposes⁴².

28. If the Site does not fall within the definition of Grey Belt it is a matter of agreement that the proposal is regarded as inappropriate⁴³. In those circumstances the relevant test is that set out in paragraph 153 of the NPPF and in order to apply that test it is necessary to put into the balance the harm to purposes (a) and (b) along with limited harm to purpose (c). It is also necessary to consider the harm to the openness of the Green Belt.

THE EFFECT ON OPENNESS OF THE GREEN BELT

29. There is no dispute that development of the proposal would inevitably reduce the spatial aspect of openness associated with the Green Belt on the developed part of the Site⁴⁴. The change from a developed area of around 0.12 hectares to a developed area of 6.4 hectares is undoubtedly significant. To look at it another way there will be on a conservative estimate a more than seven fold increase in the cubic volume of development on the Site⁴⁵, and over 50 times (53.333) increase in developed area.

30. PG seeks to play down the impact on the spatial aspect of openness by arguing that the effect on the Site as a whole should be regarded as 'limited'⁴⁶. This is not

⁴² MW XX

⁴³ MW XX

⁴⁴ PG proof §6.5 (CD 12.5).

⁴⁵ DG proof §5.52 (CD 12.7)

⁴⁶ PG proof §6.9 (CD 12.5)

an appropriate way of assessing spatial harm to openness. The introduction of over 6 hectares of development still physically reduces the openness of the Green Belt, and it does so whatever extent of open space it is accompanied by. On PG's approach, if one had a 40 hectare Site and was introducing 12 hectares of development the impact on openness on the Site as a whole would still be limited, which shows that it is not a useful way of analysing the situation.

31. It is well recognised that harm to openness does not require there to be any visual impacts, otherwise open sites in the Green Belt could be developed in areas which cannot be seen leading to the piecemeal erosion of the Green Belt. However in this case there are clear visual impacts on openness. While there are not widespread views of the Site there are public and private views into the Site, and private views across the Site. The LVIA identifies that there are public views into the Site which will have a view of the development⁴⁷ after 15 years at viewpoints 1 and 4 (from the entrance to the Site), 5, 6, 7, and 8 (from the residential area to the north of the Site) and viewpoint 13 (from the development on the northern side of Hadleigh)⁴⁸. Additionally the Council consider that there are likely to be views of the development from viewpoints 18 and 19 which are located in Dodd's Grove, a matter which will need to be judged on Site. The suggestion in the XX of PG that Dodd's Grove is not a public viewpoint is wrong- the LVIA rightly describes the viewpoints as being from recreational facilities not private locations. In fact Dodd's Grove is publicly owned⁴⁹ and the public do have access to viewpoints 18 and 19⁵⁰.

32. Therefore there are a range of public viewpoints which currently have views across a very largely open site, and where there would be views of the development in the event permission were granted. Further there are private viewpoints currently across a largely open site that will have views of the development, including in

⁴⁷ There are additional public views of the Site which the LVIA predicts will not have a view of built development but of the open space, such as viewpoints 9, 10, and 11.

⁴⁸ See table 7.1 of LVIA (CD 1.53) and map of representative viewpoints at page 31 LVIA or PDF page 39 PG proof.

⁴⁹ By Southend Council.

⁵⁰ Put to PG in XX on instructions, no response from PG to suggest this is inaccurate

particular from properties along Fairmead Avenue. Finally there are the viewpoints across the Site itself. It was very clear from the opening day of the inquiry how many people have private access to the Site in connection with keeping their horses on the site and how those individuals experience private views of the openness of the Site.

33. Therefore while views may not be extensive, it is wrong to regard the visual impacts on openness as 'limited'. This is particularly the case when permanence and movement are taken into account, as the PPG⁵¹ makes clear should be done. There is no dispute that the proposal is likely to be permanent and PG rightly takes that into account. However the PPG also requires the impact of movement to be taken into account. PG argues that the impact of the degree of activity on site would be limited, transient and not cause harm to the appreciation of openness⁵². This is not tenable. This will be 173 homes with all typical comings and goings of pedestrians and vehicles created by such a development. Just purely by way of example the Appellant's own traffic evidence refers to 94 two way trips in the morning peak and 89 two way trips in the afternoon peak⁵³-this is not an example of limited and transient movement, but an example of the extensive activity that would be expected from any housing development of this scale. This level of movement will be perceivable from within the Site and from the private and public viewpoints outside the Site already discussed.

34. In the circumstances the harm to openness (both spatial and visual) will be significant.

WHETHER HARM TO THE GREEN BELT IS OUTWEIGHED BY OTHER CIRCUMSTANCES

⁵¹ CD 7.34

⁵² PG proof §6.19 (CD 12.5)

⁵³ CD 1.59 §5.5 (pg 36).

35. As identified above there is harm to the green belt by way of inappropriateness, as well as significant harm to the openness of the Green Belt and the purposes of including land within it. These harms carry substantial weight⁵⁴.
36. The Appellant make the point in opening that there is nothing special about this and the NPPF ascribes weighting to various factors⁵⁵. To put this in context there are only two matters the NPPF ascribes substantial weight to⁵⁶, one of which is harm to the Green Belt in the §153 test. However, it is not just the fact that the NPPF tells us to ascribe substantial weight to the harm to the Green Belt that makes the very special circumstances test such a high one. It is the fact that in order to grant permission for inappropriate development in the Green Belt it is then necessary to identify very special circumstances, described as considerations which ‘clearly’ outweigh the harm to the Green Belt (already itself ascribed significant weight). The ascribing of weight and the need to identify factors which clearly outweigh the harm together provide a very high test for the granting of inappropriate development in the Green Belt.
37. It is unsurprising that it should be such a high test. As set out at the outset the Government continue to attach great importance to the Green Belt and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Allowing development such as this in the Green Belt runs counter to that fundamental objective which is why the test for permitting it is such a high one.
38. The fact that the test of very special circumstances is such a high one is important to bear in mind when looking at the history of this Site in plan making. The Appellants spent a great deal of time considering the previous occasions on which

⁵⁴ NPPF §153

⁵⁵ Appellant opening §19

⁵⁶ The other being the use of previously developed land in settlements for housing-§125

this Site has been put forward for allocation. It is right that it was proposed for allocation in the 2014⁵⁷, 2016⁵⁸ and 2019⁵⁹ draft local plans, however:

- a. The 2014 local plan was not taken forward but instead substantially amended to become the 2016 draft plan⁶⁰.
- b. The 2016 draft plan was submitted for examination. It was not however considered substantively but was withdrawn at the recommendation of the Inspector⁶¹.
- c. The 2013 Green Belt Boundary Review referred to in both the 2014 and 2016 iterations of the plan and discussed in the inquiry has been specifically and expressly superseded by the 2018 GBR⁶².
- d. The 2019 plan was submitted for examination and ultimately found sound, including the allocation of this Site for development. However the examiner was considering the release of the Site from the Green Belt against the test of whether there were exceptional circumstances for changing the Green Belt boundary⁶³. That is a different and lesser test than whether there are very special circumstances for permitting inappropriate development in the Green Belt, as accepted by MW and by the Inspector in Land East of Rayleigh Road rejecting an appeal on a site which had also been allocated for housing and found sound in the 2019 plan⁶⁴.

39. The Appellant sought to draw inferences from the proposed allocation in past plans as to what approach will be taken to the Site in the forthcoming local plan. That is not a sound approach. The NPPF has provided a new approach at paragraphs 146 to 148 for altering the boundary of the Green Belt. In bringing forwards their new plan the Council, in so far as they are looking to allocate sites

⁵⁷ CD 7.24,

⁵⁸ CD 7.26

⁵⁹ CD 6.6

⁶⁰ MW proof §5.7 (CD 12.6)

⁶¹ MW proof §5.9 (CD 12.6)

⁶² CD 7.1 §1.5

⁶³ CD 6.1 §94

⁶⁴ CD 8.2 §60.

in the Green Belt will need to apply those provisions, in particular the requirement to consider whether there are any grey belt locations which should come forwards-something officers acknowledged (in their Report to Special Council to alter the LDS) needs to be done⁶⁵. That is a matter which has not yet been done in any previous iteration of the plan⁶⁶ and which is quintessentially an exercise for the plan making process not a matter of speculation at a section 78 appeal.

40. While the plan making process has undoubtedly been challenging in Castle Point, it was clear from the various representations on the first day that there is a real determination to put a local plan in place in Castle Point which has the buy in from local people that will allow it to be adopted. An extraordinary number of residents have praised the thoroughness of the consultation process. The steps taken so far support the view that there is a determination to get the plan in place in a timely manner-the Regulation 18 issues and options document which was consistent with the LDS⁶⁷ was published in July.

41. Inevitably the significant changes introduced by the most recent iteration of the NPPF will cause some delay for the plan. That is why the current recommendation of officers to the meeting of the Council on 29 January is that there is a slight revision to the LDS, creating a three month delay to the publication of the Regulation 19 version of the plan⁶⁸. It is evident that what is being proposed by officers, if accepted by members, is not kicking the plan off into the long grass, or seeking to use the new NPPF as an excuse to go back to square one with it. Instead it is a short focussed delay to ensure that all the work necessary to comply with the new NPPF is done. These are the actions of an authority determined to get a plan in place.

42. Against that background I turn to consider the points argued by the Appellant to constitute very special circumstances for permitting the development.

⁶⁵ CD 12.14 §5.15

⁶⁶ MW XX

⁶⁷ CD 7.21, LDS at 7.27.

⁶⁸ CD 12.14, revised local development scheme and update on the Council Point Plan.

Supply of market housing

43. There is no doubt, as acknowledged by DG⁶⁹ that there is a significant shortfall in the supply of market housing and the housing delivery test results represent a poor performance. It is a matter of agreement both that the Council are failing the Housing Delivery Test⁷⁰ and that the Council cannot demonstrate a five year housing land supply by quite some distance.
44. In terms of housing land supply it is accepted that there has been a reduction in the supply recently. To a significant extent the reduction in the Council's supply is not due to any actual changes that have occurred on the ground in Castle Point but are due to the near doubling of the Council's housing requirement that came in on 12 December 2024. That by itself reduced the Council's supply from 2.3 years⁷¹ to 1.3 years⁷².
45. The Council have acknowledged that on the evidence produced to this inquiry they cannot show that all of those 1.3 years supply is deliverable, and that on the evidence before this inquiry the most they can show to be deliverable is 0.69 years supply⁷³. The difference between the Appellant and the Council is now limited⁷⁴. Nevertheless it is apparent that land at Thorney Bay should be included in the supply. As explained in the HLS round table the continual replacement of park homes at Thorney Bay does not require planning permission. The process has been ongoing for a number of years and substantial losses of homes at the Site that make way for the new homes have already been reflected in the Council's figures⁷⁵. In those circumstances it is entirely reasonable to conclude that 120 houses will come forward at the Site in the five year period.

⁶⁹ XX

⁷⁰ CD 10.2 §1.4

⁷¹ CD 7.29 AMR page 12

⁷² Original HLS SOCG CD 10.2 pg 6

⁷³ CD 10.3 page 5.

⁷⁴ A difference between 0.69 years and 0.55 years.

⁷⁵ CD 7.29 page 10

46. In all the circumstances DG rightly acknowledges that the provision of market housing through this proposal carries significant weight. Whether the weight is the second to top category or the top category does not make any fundamental difference to the outcome of the analysis (a point readily agreed by MW in XIC).
47. That is shown particularly clearly because in both of the recent appeal decisions in Green Belt sites in the Borough the Inspectors placed the highest weight in their respective scales on the delivery of market housing from those Sites⁷⁶. In Land South of Daws Heath Road this was very substantial weight (albeit the Inspector noted the relatively small impact the proposal would have on the issue⁷⁷). In Land East of Rayleigh Road the provision of market housing was given substantial weight⁷⁸ being the highest category in his scale⁷⁹. In neither of those recent local instances was the pressing need for housing found (either by itself or in combination with other factors) found to outweigh the harm to the Green Belt so as to amount to very special circumstances, notwithstanding that the highest possible weight was put on that need in both instances.
48. While that judgment was made against a housing land supply of 1.86 years⁸⁰ both inspectors had already put the highest amount of weight on the supply of housing land so it is hard to see that the change in supply would have made a fundamental difference. Furthermore, in accepting the figure of 1.86 years supply in both of those decisions the Council were not relying on the full 2.3 years supply claimed in the AMR⁸¹. Therefore MW was right to accept in XX that the reason for reduction in the HLS since those appeals is very substantially the overnight doubling of the housing requirement, and wrong to resile from that position in re-examination.

⁷⁶ CD 8.1 Land South of Daws Road and CD 8.2 Land East of Rayleigh Road.

⁷⁷ CD 8.1 §50.

⁷⁸ CD 8.2 §44

⁷⁹ CD 8.2 §4

⁸⁰ CD 8.1 §44, CD 8.2 §44,

⁸¹ MW XX

49. Furthermore the Inspector at Land East of Rayleigh Road explicitly recognised in making his decision that the housing land supply situation was likely to worsen if the then proposal to change the standard method housing calculation was brought in force and result in a significant increase in the NPPF's assessment of local housing need⁸². The fact that he expressly made his decision in this context shows that the doubling of the housing requirement would not have been fundamental in either of those inspector's decisions and does not fundamentally change the position here.

50. MW seeks to limit the relevance of those two appeal decisions by pointing out that the inspectors there found other harms beyond Green Belt Harms. At Land South of Daws Heath Road limited harm was attributed to impact on landscape character and appearance, impacts on a locally listed building and the impact on the riding centre⁸³. At Land East of Rayleigh Road moderate weight was given to harm to character and appearance⁸⁴. While there were some additional harms those extremely limited non-green belt harms do not realistically distinguish those appeal decisions.

51. To the contrary they are recent appeal decisions, which identified harm to the openness and purposes of the Green Belt (as in this case) and which concluded that even with all of the problems experienced in the supply of market housing in the Borough, the provision of market housing did not alone (or in combination with other factors) amount to very special circumstances. These appeal decisions are evidently highly relevant.

The provision of affordable housing

52. Again DG recognises that the provision of affordable housing represents a very low level of provision⁸⁵. There is no doubt that is the case. Part of AG's evidence on

⁸² CD 8.2 §44

⁸³ CD 8.1 §83-85

⁸⁴ CD 8.2 §43

⁸⁵ DG XX

affordable housing relies on losses through right to buy⁸⁶, and sales through right to buy are out of the control of the Council. Nevertheless as DG recognises there needs to be a step change in the provision of affordable housing at the Council. Such a step change can only come through getting a plan in place⁸⁷, and as set out above the Council is doing everything it can to put such a plan in place.

53. The weight to be placed on the need for affordable housing acknowledged in the officer's report⁸⁸ which identified the extent of the Council's Housing Waiting List and the fact that the list is increasing, the lower quartile house price to income ratio and the rents being demanded. It expressly accepted that the demand for affordable housing was growing and the prospects of the authority fully meeting its affordable housing needs is remote. This led the officer's report (supported by DG) to give significant weight to the provision of affordable housing from the scheme.

54. Whether affordable housing is given the top weighing, or the penultimate weighting is not crucial to the decision. As with market housing, in both the recent Green Belt Appeal decisions the Inspectors gave top weighting to the provision of affordable housing⁸⁹. As discussed above, in neither case was the attribution of top weight to the provision of affordable housing sufficient either by itself or in combination with other circumstances to amount to very special circumstances to justify inappropriate development in the Green Belt.

Biodiversity Net Gain

55. The submitted biodiversity report identifies the provision of 10% BNG⁹⁰. It is agreed that is not a mandatory requirement and it is agreed that it carries weight. However MW's assessment of substantial weight⁹¹ is too great. It is notably out of

⁸⁶ CD 12.4 pg 22 table 5.1

⁸⁷ AG XX

⁸⁸ CD 3.2 page 24.

⁸⁹ CD 8.1 §53, CD 8.2 §48

⁹⁰ CD 10.1 SOCG §16.15

⁹¹ CD 12.6 §7.110

line with the approach taken at Land East of Rayleigh Road where the provision of 10% BNG was given no more than moderate weight⁹².

Economic factors

56. It is accepted that the proposal will carry economic benefits, as expressly listed and acknowledged in the officer's report⁹³. While the economic benefits are welcome, they are in line with what would be expected for a scheme of this nature. There is no reason to give them significant weight as MW seeks to⁹⁴, but they should be given lesser weight.

Provision of open space

57. It is a matter of agreement that the proposal will offer 10ha of open space⁹⁵, and that this exceeds policy requirements for open space⁹⁶. While there is some (unspecified) deficiency of open space in the Borough, as identified by the Committee Report it is also very important to note that there are already significant areas of open space within walking distance of the Site at Pound Wood, Great Wood, Dodds Grove, West Wood and the John Burroughs Recreation Green⁹⁷. Therefore the provision of open space above policy requirements carries weight but not the substantial weight argued for by MW⁹⁸.

Paragraph 158

58. As the scheme complies with the Golden Rules paragraph 158 NPPF recognises that it should be given significant weight in favour of the grant of permission. However:

⁹² CD 8.2 §53

⁹³ CD 3.2 page 28

⁹⁴ CD 12.6 §7.116

⁹⁵ CD 10.1 §16.16

⁹⁶ CD 3.2 page 25

⁹⁷ CD 3.2 page 25.

⁹⁸ MW proof §7.106 (CD 12.6)

- a. Significant weight here is less than the substantial weight that must be afforded to Green Belt harm⁹⁹. In other words the compliance with the Golden Rules by itself does not even out the balance between Green Belt harms and the benefits of the scheme.
- b. The Golden Rules are passed by provision of affordable housing, open space and meeting infrastructure needs. To attribute significant weight under 158 and (for example) very substantial weight to the provision of affordable housing would be clear double counting of that benefit.

VSC

59. Consistent with the approach taken in the officers report, by DG, and by the Inspectors at Land South of Daws Heath Road and Land East of Rayleigh Road, even when all those factors are taken together they do not clearly outweigh the harms to the Green Belt which carry substantial weight.

60. In those circumstances the effect of paragraph 153 NPPF is that permission should be refused. That provides a 'strong reason' for refusing the development proposed within the terms of paragraph 11(d)(i) of the NPPF. Given that the NPPF is agreed to be an important material consideration (or as MW puts it a very important material consideration holding significant weight in the determination of the appeal¹⁰⁰) it also provides justification for refusing permission notwithstanding the compliance of the scheme with the development plan. MW realistically accepts that in those circumstances permission should be refused¹⁰¹.

CONCLUSION

61. For all of the above reasons the proper conclusion in this case is that the proposal is inappropriate development in the Green Belt for which there are no very special

⁹⁹ MW XX

¹⁰⁰ MW proof §7.3 (CD 12.6)

¹⁰¹ MW XX

circumstances. Therefore paragraph 153 of the NPPF makes clear that permission should be refused and the Council respectfully invites the Inspector to dismiss this appeal.

CLARE PARRY
Cornerstone Barristers
22 January 2025

Abbreviations:

DG-David Gittings

PG-Paul Gibbs

MW-Matthew Wood

AG-Annie Gingell

LDS-local development scheme

XIC-examination in chief

XX-cross examination

Re-exam-re-examination

GBR-Green Belt Review (CD 7.1, 7.2, 7.3)

CD-core document