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# Appeal Decision

Inquiry held on 4 – 7 June 2024

Site visit made on 6 June 2024

**by A Dawe BSc (Hons), MSc, MPhil, MRTPI**

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

**Decision date: 22<sup>nd</sup> August 2024**

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**Appeal Ref: APP/M1520/W/24/3338797**

**Land east of Rayleigh Road, Thundersley, SS7 3UB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr Mark Sperrin of This Land Development Limited against the decision of Castle Point Borough Council.
  - The application Ref is 23/0085/OUT.
  - The development proposed is described as Outline planning application for the development of up to 455 new homes, a new multi-use community hall, land for the provision of a healthcare facility, land for a stand-alone early years and childcare nursery, new vehicular/pedestrian access points from Stadium Way in the north and Daws Heath Road in the south, new greenways and green links, multi-functional open space, green infrastructure, surface water attenuation, landscaping and associated infrastructure. All matters reserved except access.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal relates to an outline planning application with all matters reserved for future consideration other than access. The matters of appearance, landscaping, layout and scale would therefore be for future consideration were the appeal allowed. The Appellant has however submitted proposed parameter plans relating to land use and vehicular access, non-vehicular access, multi-functional open space, and building scale which I have therefore taken into consideration.
3. In respect of the proposed building scale parameter plan, an amended version of this was submitted at the appeal, removing reference to the maximum heights for the buildings of up to 2 and 3 storeys. That plan supersedes the original version. As this does not fundamentally alter the proposal, I am satisfied that in accepting it for consideration no parties would be prejudiced by this. Also submitted is a proposed development phasing plan which, although for illustrative purposes, shows how the proposal could be phased, and as such I have also taken that into consideration. I have determined the appeal on that basis.
4. In attributing weight in my section on other considerations and Green Belt balance, for clarity in light of different terms used for the higher weightings by the main parties, the scale that I have used from least to greatest is: limited, moderate, significant, and substantial.

5. Following the closure of the Inquiry, an appeal decision was issued relating to a site adjacent to the current appeal site, at land south of Daws Heath Road, Ref. APP/M1520/W/23/3329585. That decision, which dismissed the appeal, includes issues that are also under consideration with this current appeal. Although I have determined this appeal on its own merits, that recent decision is therefore a material consideration. As such, the main parties were invited to comment on that decision in the context of the matters at issue with the current appeal. I have taken their subsequent submissions into account in determining the appeal.
6. Also since the Inquiry closed, a consultation on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation" (the Framework consultation document) was published by the Government. The status of those documents, being in the consultation phase, significantly limits the weight that I afford to them. Nevertheless, together with the Secretary of State's written ministerial statement entitled "Building the homes we need" (the WMS), which was published at the same time and to which I afford some weight, they are material considerations. As such, the main parties were invited to comment on them and I have again taken their subsequent submissions into account in determining the appeal.
7. In respect of those consultation and WMS documents, the measures set out to address the housing crisis relate to the intention to improve affordability, turbocharge growth and build 1.5 million homes across the country over the next five years. Those measures would include restoring and raising mandatory housing targets for local planning authorities and revisions to the standard method in establishing housing need. However, it is not disputed by the main parties that for the determination of this appeal the relevant policies of the Framework consultation document relating to Green Belt decision making would not change. In this respect, it is acknowledged that the intended new consideration of Grey Belt land is not relevant in this case. The WMS emphasises that the intended route to address under performance in housing land supply or delivery of homes will maintain restrictions on the release of wider Green Belt land. This means that it would remain possible for other Green Belt land, such as that under consideration in this case, to be released outside the plan-making process where very special circumstances exist, but that such cases would remain exceptional.

### **Main Issues**

8. There is no dispute between the main parties that, in having regard to the National Planning Policy Framework (the Framework), the proposal would represent inappropriate development in the Green Belt. I have therefore not included this as a separate main issue but will return to it in the Green Belt balance relating to the third main issue.
9. Furthermore, it is the agreed position between the Council and Appellant that harm would be caused by the proposed development due to the loss of best and most versatile agricultural land (BMVAL). It is further agreed by the main parties that the economic benefits of that land, being under 20 hectares, are limited and that limited weight should therefore be afforded to its proposed loss. I have no substantive basis to find differently and as such have not

included consideration of BMVAL as a main issue. I will however return to this factor in the Green Belt balance.

10. The issue relating to the character and appearance of the area was not included by the Council as a reason for refusal of the planning application. However, the Council has raised this issue in the appeal submissions, finding harm, and both parties have subsequently considered this matter in Proofs of Evidence and at the Inquiry itself. Although the Appellant acknowledges that harm would be caused, the extent of harm and weight afforded to that is disputed. I have therefore included this as a main issue.
11. The main issues are therefore:
  - i) The effect of the proposed development on the openness of the Green Belt;
  - ii) The effect of the proposed development on the character and appearance of the area;
  - iii) Whether the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

## **Reasons**

### *Openness of the Green Belt*

12. The site lies within the Green Belt adjacent to the settlement boundary of Thundersley, between Rayleigh to the north and Hadleigh to the south. The site largely consists of open fields surrounded by mature trees and other vegetation, together with a small amount of built development.
13. The fundamental aim of Government Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of Green Belts being their openness and their permanence. Openness has both a spatial and visual dimension which I shall consider in turn in relation to the site and effect of the proposed development on those aspects. I will then also consider the effects of the proposal in the context of the purposes served by the Green Belts as set out in the Framework. Those agreed by the main parties to be relevant to this site, and I have no substantive basis to consider differently, relate to a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; and c) to assist in safeguarding the countryside from encroachment.
14. In spatial terms, I acknowledge the existing presence of built form on the site. However, it represents a relatively small amount compared to the overall land area. I also note the intention for a significant proportion of open space to be designed into the proposal and the significant degree of existing containment around three sides of the site by buildings. It is also the case that the site's current level of openness is contained to varying degrees around its edge, and internally in respect of its component parts, by mature trees. Nevertheless, and regardless of the extent to which the site or its different parts can or would be seen from vantage points surrounding or within it, or the intention for mitigating contextual design, the proposed development would still represent a considerable increase in built form on the site. Given the size and scale of the

- proposal in terms of the numbers of dwellings and other related development, and land area, that would represent substantial loss of, and harm to, the openness of this part of the Green Belt in spatial terms.
15. In visual terms, this does not relate to a consideration of the effect on the character and appearance of the area which I shall address separately. In considering this factor, I have nevertheless taken account of the Landscape and Visual Impact Assessment (LVIA) submitted by the Appellant, along with all other relevant submissions and my observations. As referred to above, the site is generally well contained by either, or a combination of, existing buildings to the north, west and a large part of southern side, or mature trees. Furthermore, as mentioned above, intervening mature trees surrounding the component fields of the site limit the extent to which views are possible across its whole extent. Nevertheless, clear views into the site are possible from some localised vantage points. Notably, these include views from Daws Heath Road at the south-east corner of the site where there is also only limited tree cover alongside that part of the road; and from the public footpath BEN-7 running alongside the eastern section of the site's northern boundary.
  16. Views into the westernmost part of the site are also possible to varying degrees from the adjacent Rayleigh Road, either end of the intervening tree belt. Although I only observed the site during the summer, views through that belt of trees would also be likely to some extent in winter months during leaf fall. Clear views into that part of the site are also possible from the footpath adjacent to the site linking Rayleigh Road to the northern end of Asquith Gardens, as are restricted views from that road in between houses. The site can also be seen from Asquith Avenue and Firfield Road, albeit limited to varying degrees by existing buildings and boundary vegetation particularly with trees in leaf in the summer months.
  17. From beyond the eastern site boundary, in particular from the north-south element of public footpath BENF-7 linking with Daws Heath Road, the site is, and would continue to be screened to varying degrees by mature trees, more so in respect of the northern section of that footpath. Views from the southern section of that footpath across to the proposed phase 2 part of the site are screened or significantly softened by a line of trees along the east side of that section of the site's boundary, albeit likely to be less so in the winter months during leaf fall. To some extent, the site can also be glimpsed in between buildings at various points, albeit quite limited and restricted, including from Stadium Way in the vicinity of the convenience retail superstore and from Daws Heath Road.
  18. Although localised, a significant, albeit variable, amount of the site is therefore visible from public vantage points. There is also permitted footpath access to the site on its eastern side which allows additional internal views across the corresponding parts of the site. That is along with those views from albeit informal tracks on the western side of the site, although again restricted largely to the immediately adjacent fields due to intervening trees, likely to be less so during leaf fall in winter months in those places where the tree lines are narrower.
  19. The proposed development, comprising up to 2 or 3 storeys, with 2-storey in the south-eastern corner of the site, would therefore also be likely to be viewed on just a localised basis. Views of the full extent of the proposed development

- would be limited from any one point, due to the degree of containment of the various sized site compartments and dependant on the extent to which any additional tree planting would be effective as supplemental screening to that existing. There would also be the proposed significant element of retained open space, although it would be spread across the site and generally likely to be seen in the close context of the new built form.
20. Nevertheless, from those various vantage points in the vicinity of the site, there would likely be a generally high degree of visibility of the proposed built form and associated increased activity, such as from vehicular traffic, albeit to varying extents from individual viewing locations. It is likely that it would be particularly exposed in the south-east corner of the site nearest to Daws Heath Road either side of and including the proposed vehicular access to the site, and from the section of public footpath BEN-7 adjacent to the corresponding part of the site's northern boundary. As such, there would be a significant loss of, and harm to, the openness of the Green Belt in visual terms.
  21. Having regard to the Green Belt purposes, in respect of purpose (a), the proposal would be infilling an area of land, albeit a significant area, bounded on most of three sides by significant existing built form, the exception being to the south-east corner of the site where there is a lesser amount of existing development alongside Daws Heath Road. Furthermore, in terms of its current role in preventing urban sprawl, whilst there is some existing development on and in the close vicinity of the site within the Green Belt, the boundary of the Green Belt along those sides where there is significant existing settlement is generally well defined by existing development, mature trees, or roads.
  22. Nevertheless, that infilling effect, particularly for the majority of the site that is contained by that significant urban development referred to above on three of its sides, would not be inconsistent with the wider general settlement pattern, albeit across a significant area of land. Furthermore, although the land to the east of the site is undeveloped, the remaining site boundaries to the east and south-east would comprise defensible boundaries comprising woodland, proposed open space areas, existing dwellings adjacent to the site on Daws Heath Road, and that road itself. Therefore, whilst the proposed development itself would inevitably encroach into the countryside, it would be in that context of control rather than encouraging the likelihood of further unrestricted sprawl. As such, the proposed development would be likely to cause limited harm to Green Belt purpose (a).
  23. In respect of Green Belt purpose (b), the site currently provides a significant and clear break between Thundersley and Daws Heath. That is notwithstanding the existing presence of ribbon form development along Daws Heath Road stretching eastwards from Thundersley. That ribbon development nevertheless only represents a narrow band of built form, and still with a distinct gap in between it and Daws Heath. Furthermore, the site currently prevents a wider merging of settlement between Rayleigh to the north and Thundersley to the west and south.
  24. With that relationship between Rayleigh and Thundersley, the proposed development would therefore more distinctly consolidate that existing north-south merger, particularly given the break in built form on the east side of Rayleigh Road providing a visible degree of physical separation. However, an albeit relatively narrow band of merging of those settlements has already

- occurred on the western side of Rayleigh Road. Furthermore, that part of the site where development would be adjacent to and visible from Rayleigh Road is relatively narrow. It is also proposed to retain the line of trees within an albeit narrow strip of open space alongside that stretch of the eastern side of the road, such that there would be a degree of separation of new houses from the road. That retained existing tree line would therefore maintain some degree of visual break between existing development on that side of, and as seen from, Rayleigh Road at the northern edge of Thundersley. For these reasons, the harm to purpose (b) in respect of the north-south merging would be limited.
25. Regarding the existing separation of Daws Heath, there is a small amount of existing development in the Green Belt at its narrowest point in between Daws Heath and Thundersley, including a small row of four houses on the northern side of Daws Heath Road. The proposed development would subsume that row of houses into the expanded main urban area of Thundersley by infilling the intervening space along Daws Heath Road and would noticeably reduce that existing Green Belt gap. Whilst not closing the gap, the remaining intervening distance would be limited. That gap reduction would also be in a form of development significantly expanded away from Daws Heath Road, thereby broadening the extent to which that narrowest part of the Green Belt gap would be reduced. These factors would be likely to contribute to the perception of some degree of merging of Thundersley and Daws Heath, albeit not actual coalescence of built form, particularly in respect of the south-east part of the proposal.
26. It is likely that such perception would be tempered to some degree by the extent to which the east facing site boundary would provide a defensible edge to the remaining Green Belt. That eastern boundary to the indicated phase 2 development would comprise an existing line of trees and a strip of open space, albeit that it is not certain this would completely screen the development from views across the remaining Green Belt land, particularly in winter months during leaf fall and would be partly dependent on the long-term survival of the trees concerned. That would combine with the well-defined edge to Daws Heath in terms of providing clear edges to the remaining band of Green Belt land.
27. Nevertheless, despite that degree of tempering, for the above reasons, the extent of harm that would be caused by the proposal to purpose (b) in respect of the relationship between Thundersley and Daws Heath, would likely be at a significant level.
28. In terms of Green Belt purpose (c), as previously referred to, the site is contained on much of three sides. As such, it has an urban influence including in terms of the visual proximity of existing built form, its usage for localised activities such as dog walking, and the varying extent to which background traffic noise can be heard. However, the site is also large enough, with its various fields and significant extent of containment around and within it by mature trees, to give it a pleasant open character in its own right, notwithstanding its connection to the wider countryside to the east and on the opposite side of Daws Heath Road to the south-east. The area of countryside comprising the site, as I have previously found, is also visible to varying degrees from outside of its boundaries, albeit localised, and from paths and tracks within the site.



29. Developing into that countryside environment, notwithstanding the intended extent of open space and retained trees, the proposal would represent a significant encroachment of built form and associated vehicular activity. Furthermore, the south-east corner of the proposed development would be on land currently set apart from the main body of the existing settlement of Thundersley, excluding the nearest ribbon of buildings. The extent of harm relating to the proposal as a whole would be lessened by the degree of urban containment and localised impact in terms of the wider countryside. Nevertheless, for the above reasons, it would still represent moderate harm to purpose (c).
30. Having regard to the Green Belt purposes, along with all other relevant submissions and my observations, I have taken account of the Castle Point Borough Green Belt Review 2018 – Parts 1 and 2 which was conducted as part of the now withdrawn new Local Plan process. The purpose of the Part 1 Review was to enable understanding of how the Borough's Green Belt land, broken up into parcels, contributes to the fundamental aims, characteristics and purposes of the Green Belt. The role of Part 2 was to assess the degree of harm to the Green Belt on a site-by-site basis, in allocating Green Belt sites that had been put forward for housing, of which the appeal site was one. Most of the site forms part of parcel 4 in respect of the Part 1 Review. Parcel 4 was assessed to contribute very strongly to all three of the relevant Green Belt purposes (a), (b) and (c). In respect of the Part 2 Review the degrees of harm of releasing the site itself for housing in respect of the same three purposes were found to be moderate, very strong, and strong respectively.
31. The Examining Inspector for the withdrawn Local Plan subsequently found that the development of the site would cause harm to the openness of the Green Belt and some harm to its purposes as it would cause a loss of countryside and serve to reduce the strategic gap between Thundersley and Daws Heath. My colleague did however go on to find that the site would be enclosed by existing development to the west, north and along much of its southern boundary; that a new Green Belt boundary would be formed to the east of the allocation with the nature reserve; and that this would be readily recognisable and likely to be permanent, maintaining a gap and preventing coalescence between Thundersley and Daws Heath.
32. Although the Local Plan has been withdrawn, there is no substantive evidence of the circumstances relating to the evidence base for the proposed allocation and the Examining Inspector's conclusions on the extent of effects on the Green Belt having changed. That evidence and those conclusions therefore carry significant weight, albeit that no weight can be afforded to the policies of the withdrawn Local Plan. In respect of the three purposes of the Green Belt, (a), (b) and (c), my above findings, which take account of all the submitted evidence and my observations, are not inconsistent with those of the Examining Inspector, albeit that my colleague did not assign such specific levels of harm.
33. Having regard to appeal decision Ref. APP/M1520/W/23/3329585 for land south of Daws Heath Road, similar Green Belt matters were involved, particularly as that site is also in parcel 4 in relation to the Part 1 Review referred to above. However, my colleague in that case found that there would be significant loss of Green Belt openness in spatial terms and limited in visual terms. Whilst lower than my respective findings on these matters, the appeal

proposal at hand differs from that other proposal in terms of the significantly greater area of Green Belt land that it would occupy.

34. Furthermore, it was found in that other decision that for the respective same three Green Belt purposes, significant harm would be caused in each case. Whilst such levels are higher in terms of purposes (a) and (c) than those relating to my findings, that is in the context of the differing circumstances relating to the current appeal site as a whole and the degree to which it would be contained by existing development.
35. In respect of this main issue, I have had regard to other appeal decisions referred to by the Appellant relating to housing in the Green Belt, which were allowed, including those relating to Land Rear of 248 Hart Road, Thundersley<sup>1</sup> and Land North of Kennel Lane, Billericay<sup>2</sup>. I do not have the full details of those cases to enable a proper comparison and have in any case determined this appeal on its own merits. Nevertheless, in respect of the former, this was a much smaller development than the current proposal and where the Examining Inspector for the now withdrawn Local Plan, in relation to that site, specifically identified limited harm to the Green Belt through loss of openness and to the relevant purposes. The circumstances are therefore different in that respect to those of the current appeal site where the Examining Inspector found there would be harm to openness of the Green Belt and some harm to its purposes.
36. In the latter of those other cases, which relates to a different Local Authority area, the Inspector found moderate harm to openness of the Green Belt and limited harm to each of purposes (a)-(c). In coming to those findings my colleague referred to the extent of containment of the site as a factor in respect of openness. However, it appears also to be in the context of an existing situation where the mass of the adjoining existing residential properties and their varied boundary enclosures, which immediately frame the site are clearly evident on the skyline when viewed from the south. Furthermore, in respect of purpose (b), my colleague found that the proposal would not in itself cause coalescence or merger with any other settlement. However, it was also found that a far greater level of further development would be required in the remaining intervening area for that to occur. For the reasons I have set out in relation to the proposal at hand, I do not consider the same would apply, due to the limited intervening distance to Daws Heath that would remain. As such, again, there appear to be differences in circumstances between that proposal and the current appeal scheme.
37. For the above reasons, the proposed development would cause harm to the Green Belt through loss of openness. Furthermore, it would conflict with the first three purposes of the Green Belt as set out in paragraph 143 of the Framework. I shall return to this, and the respective levels of harm that I have found, in the Green Belt balance.

#### *Character and appearance*

38. In considering this issue I have again taken account of the submitted LVIA along with all other relevant submissions and my observations. I note that my colleague, in deciding the appeal referred to previously for the scheme on land

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<sup>1</sup> Appeal Ref APP/M1520/W/22/3310483

<sup>2</sup> Appeal Ref APP/V1505/W/22/3298599



south of Daws Heath Road<sup>3</sup>, found that there would be limited and localised harm caused to landscape character and appearance in that case. The appeal proposal at hand, which I have considered on its own merits, would clearly differ from that other scheme in terms of its larger scale and location on the northern side of Daws Heath Road, with a significant degree of containment by existing urban development.

39. As referred to above, the site is set in the context of urban development on most of three of its sides, to the north, west and south. Nevertheless, due to its significant land area and good, albeit variable, degree of vegetation cover around and within it, there remains some sense of separation from urban form, particularly towards the central, eastern, and less contained south-eastern parts of the site. This together with the strong visual presence of mature trees around and within the site, including along field boundaries, provides a pleasant open environment where trees are prominent. Furthermore, that environment can be enjoyed and experienced to varying degrees both from those external vantage points referred to previously and from within the site, albeit the latter relating to permissive paths or informal tracks. Such experiences are nevertheless still likely to be tempered, again to varying degrees, by the surrounding urban presence.
40. From the section of public footpath BEN-7 running along part of the northern site boundary, there are open views across the large adjacent field on the site. However, the sense of openness is tempered by the segregation from the site created by the fencing running alongside that path and the close presence of the trading estate buildings to the north albeit softened to varying degrees by intervening trees. Furthermore, the public footpath then running southwards, to the east of the site, is separated from the site by varying extents of intervening land and tree cover. That is notwithstanding the likely weakened screening or softening effect in the winter months during leaf fall, particularly in relation to the narrower strip of trees along the eastern boundary of the south-east part of the site.
41. Away from the surrounding roads, the paths or tracks on the site, and the nearby public footpaths referred to previously, also provide a degree of tranquillity. However, due to that physical proximity to the adjacent urban area, such tranquillity, together with the degree of detachment experienced, is tempered by the background sound of traffic noise, albeit to varying degrees and less so towards the eastern end of the site.
42. Whilst the site is not a valued landscape for the purposes of paragraph 180a of the Framework, for the above reasons, it nevertheless retains a pleasant character and appearance. The proposed development would inevitably change and significantly impinge upon that, due to the amount of new built form and associated activity. This would be tempered to some degree by the extent of retained open space and trees together with any proposed new planting and enhanced landscaping, and the localised nature of viewing the development. However, as referred to previously, it is indicated that the full extent of open space would be spread across the site and therefore likely to be generally seen in the close context of the proposed new built form. Furthermore, proposed built form would be likely to significantly intervene in views of existing mature tree belts, albeit to varying degrees depending on the location, from vantage

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<sup>3</sup> Appeal Ref APP/M1520/W/23/3329585

points within and adjacent to the site. Additionally, the proposal would be likely to introduce additional noise such as from traffic movements on the site.

43. The Council is not citing any non-conformity with the local development plan in respect of this issue, and I have no substantive basis to consider differently. However, I have taken into account paragraph 180b of the Framework which sets out that decisions should contribute to and enhance the natural and local environment by recognising, amongst other things, the intrinsic character and beauty of the countryside. Although not as stringent in terms of the protection and enhancement required for valued landscapes and that it does not preclude any development, nevertheless, for the above reasons, the proposed development would cause some harm to the character and appearance of the area. That would represent a degree of failure to recognise the intrinsic character and beauty of the countryside, contrary to paragraph 180b of the Framework. However, in taking account of those mitigating and tempering factors referred to above, the harm caused would be at a moderate level to which I afford moderate weight. I shall consider this further in the Green Belt balance.

*Other considerations and Green Belt balance*

44. The proposed development would provide a large number of new dwellings to boost local supply, a factor that supports the Government's objective to do so which is also spelt out in the recently published WMS which highlights that the country is in the middle of the most acute housing crisis in living memory. Furthermore, it would be in a location that would be accessible to local facilities and services to serve the day to day needs of prospective residents, including public transport; and make on-site provision for appropriate community uses, and be supported by the necessary infrastructure, a factor highlighted as necessary for Green Belt release in the recent WMS. Such provision of new housing would be a substantial benefit, particularly given that the Council is unable to demonstrate a five-year supply of deliverable housing sites (5-year HLS) and the significant extent of the shortfall, the existing supply being 1.86 years' worth. That represents a shortfall 1114 dwellings and a situation likely to worsen, particularly if the Government's intended changes to the standard method calculation are put into force and result in a significant increase in local housing need.
45. This is also in the context of a significant shortage in delivery in recent years, with the Local Planning Authority being one of the lowest performing in England in this respect and there being no substantive evidence to indicate improvement in the near future, including in respect of any other similar sized developments as that proposed here. Furthermore, following the withdrawal of the new Local Plan, which would have addressed local housing need, there is no Local Plan policy in place to clearly address that need soon. This is in light of the current early stage in the process of adopting another Local Plan. In this respect, based on the Council's Local Plan timetable, such adoption will not be before March 2026, conceded by the Council's witness in cross-examination to be the earliest likely date, with the uncertainty for housing delivery that goes with that.
46. Added to that would be the likely degree of lead-in time post adoption for completion of homes on allocated sites. The timescale for such adoption could also be further delayed were the Government's intended changes to the

Framework taken forward and incorporated into the Council's new Local Plan to take account of the implications for utilising the new standard method calculation. I also acknowledge that of the housing that has been provided in recent years, as well as traditionally built homes, this has partly relied upon mobile homes, caravans, and boats.

47. As such, given the large number of dwellings proposed in respect of the current appeal, this would inevitably play a significant part in addressing the housing need and HLS shortfall, and in speeding up the delivery.
48. Furthermore, as part of that proposed housing, there would be the substantial benefit of providing a large number of new affordable dwellings, intended to be a minimum of 40 per cent of the total number of homes. This is particularly given the recognised substantial undersupply in the Borough, where very little has been provided in recent years, and with no clear substantive evidence to indicate improvement in the near future. This is also consistent with the recent WMS which emphasises the need to provide affordable housing, albeit setting out a target of at least 50 per cent of homes provided onsite. I therefore afford substantial weight to the delivery of both the proposed market and affordable housing.
49. The withdrawal of the new Local Plan was also in the context of the Green Belt boundary not having been reviewed in respect of an adopted Local Plan for a significant number of years; and where the Examining Inspector had highlighted that the need for housing could not be accommodated within the existing urban area. I have no substantive basis to consider that such circumstances have changed, whereby Green Belt land is required to meet the housing need.
50. In this respect, I have had regard to the submitted recent Report to Portfolio Holder for Deputy Leader of the Council concerning the Chelmsford Local Plan Review Preferred Options Consultation, dated 18 June 2004. This states that it will not be possible to meet the Borough's housing needs in full without an incursion into the Green Belt. This is notwithstanding the Government's intended reforms to prioritise firstly Brownfield and then Grey Belt sites before higher performing Green Belt land, albeit that the WMS highlights that this sequence may not make sense in all instances. There is also no indication that such needs will be met by neighbouring Councils, or any substantive evidence to suggest that housing requirements will be less upon adoption of a new Local Plan, and indeed they could be increased were the Government's reforms referred to previously brought into force.
51. The proposed development would be likely to contribute towards sustaining a significant number of jobs directly during the construction phase which in turn would be likely to include local people. Although not on a long-term basis, given the scale of the proposed development, that contribution would be likely to continue over a number of years. Indirectly, this would also be likely to benefit the economy such as through the construction supply chain, which would have the potential to involve local businesses, and through local spending by people working on the site. In the circumstances of a low level of local housing delivery in recent years, such benefits would be likely to be more distinct. I therefore afford significant weight to these factors.
52. In respect of the operational phase, the prospective occupiers would be likely to provide a significant amount of additional local spending, such as in local

- shops and community facilities, and support towards the local economy, including through employment. However, the extent of such benefits relative to the existing level of support provided by the local population is unclear. The proposed on-site community facilities would, upon delivery, also have the potential to create some local employment although the extent is not clear at this stage. Whilst the Council would receive the added Council Tax receipts from the increased number of households, this would nevertheless be needed to meet the needs of prospective residents in respect of the services it would support. I therefore afford moderate weight to those economic benefits relating to the operational phase.
53. The proposed development, through the proposed green infrastructure, would deliver over 10% biodiversity net gain. This would be more than required, albeit the Framework sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, providing net gains for biodiversity. As such, this would be a benefit that attracts moderate weight.
54. I acknowledge the intention to provide enhanced landscaping on the site. However, I have considered this in relation to the second main issue where I have found there would be net harm to the character and appearance of the area. As such, I have not afforded any additional weight to such provision in its own right within the Green Belt balance.
55. In respect of the proposed new community hall on the site, along with the provision of land for a healthcare facility and education facility, it is intended that this would service the needs of prospective residents of the appeal site. However, such provision would also be likely to benefit the wider population to some degree. I therefore afford moderate weight to that benefit.
56. I have noted the Appellant's reference to another appeal decision in Knowle<sup>4</sup> in respect of the very numerous benefits identified in that case, including several carrying considerable individual weight, resulting in the benefits collectively outweighing the totality of the harm. Those findings were in the similar context to this appeal of there being no adopted strategy to address need, significant uncertainty over when such a strategy might be in place, and the absence of any other identified sites that might contribute to meeting the unmet need in the meantime. I do not have the full details of that other case to enable a proper comparison. However, I note that the circumstances were different in respect of that appeal relating to a smaller scale of development, specifically for an extra care facility, and the associated need for that, and in a different Local Planning Authority area. In any case, I have determined this appeal on its own merits based on all the evidence specific to this proposal.
57. As previously referred to, whilst determining this appeal on its own merits, I have had regard to other appeal decisions referred to by the Appellant relating to housing in the Green Belt, which were allowed, including those relating to Land Rear of 248 Hart Road, Thundersley<sup>5</sup> and Land North of Kennel Lane, Billericay<sup>6</sup>. In terms of the Green Belt balance, I have found there to be differences between those and the current appeal in terms of the circumstances and the levels of Green Belt harms, albeit with there being insufficient

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<sup>4</sup> Appeal Ref APP/Q4625/W/21/3285876

<sup>5</sup> Appeal Ref APP/M1520/W/22/3310483

<sup>6</sup> Appeal Ref APP/V1505/W/22/3298599

information to make a proper comparison between the proposals. Furthermore, no unacceptable harm was found in respect of character and appearance with those two schemes, unlike for this case where it is not disputed by the main parties that there would at least be limited harm, and I have found it would be at a moderate level.

58. As also previously referred to, and again whilst determining this appeal on its own merits, I have had regard to the recent decision for land south of Daws Heath Road<sup>7</sup>. My colleague similarly afforded levels of weight to provision of market and affordable housing that reflected the current situation with housing supply and provision and the early stages in the new Local Plan process referred to above. However, I acknowledge that the decision was made in the context of the relatively small contribution that proposal would make towards meeting housing needs. The Inspector also went on to find that the contributions the proposal would make to housing and affordable housing supply would be modest relative to the overall degree of harm that would be caused to the Green Belt. The appeal at hand would clearly contribute significantly more market and affordable homes than that other proposal in terms of relative benefits, along with other relatively greater benefits, albeit at the same time affecting a significantly larger area of Green Belt land than that other appeal scheme. I also acknowledge that my colleague's decision was not in the same context in terms of the site itself not having been through the withdrawn Local Plan process as one considered for housing allocation and concluded upon by the Examining Inspector. There are therefore differences in the circumstances relating to the two appeal proposals.
59. Having regard to the Framework, the proposed development would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, I have found that substantial and significant levels of harm would be caused by the proposal to the openness of the Green Belt in spatial and visual terms respectively. Additionally, I have found there would be varying levels of harm caused by the proposal in terms of its conflict with the relevant three Green Belt purposes. This is all set in the context of the great importance attached to Green Belts by the Government and that it should be ensured that substantial weight is given to any harm to the Green Belt.
60. In respect of the now withdrawn Local Plan, I have previously highlighted the Examining Inspector's conclusions in respect of harm to the Green Belt as a result of releasing the site from the Green Belt for housing. My colleague went on to find that whilst there would be harm to the Green Belt, the policy requirements would serve to reduce that harm; and that overall, given the need for housing which could not be accommodated within the existing urban area, and subject to recommendations, there were exceptional circumstances for releasing the site from the Green Belt. This body of evidence is a material consideration to which I have afforded significant weight. However, my colleague's conclusions were in the context of that exceptional circumstances test as opposed to the agreed more stringent consideration of whether very special circumstances exist in respect of this appeal.

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<sup>7</sup> Appeal Ref APP/M1520/W/23/3329585

61. In taking all factors into consideration relating to this appeal, the potential harm that would be caused by the proposal to the Green Belt by reason of inappropriateness, together with the varying levels of harm that I have found would be caused in respect of openness, the purposes of the Green Belt and to the character and appearance of the area, along with the albeit limited harm caused by loss of BMVAL, is not clearly outweighed by other considerations. This is despite the extent of, and in some cases high degree of weight afforded to, the benefits. As such, the very special circumstances referred to in the Framework do not exist.
62. Having regard to paragraph 11d of the Framework, the application of policies in the Framework that protect land designated as Green Belt therefore provides a clear reason for refusing the development proposed.

### **Other Matters**

63. I have had regard to the effect of the proposed development on the Foulness Estuary Special Protection Area (SPA) and Ramsar Site, the Benfleet and Southend Marshes SPA and Ramsar Site, the Blackwater SPA and Ramsar Site, and the Essex Estuaries Special Area of Conservation. I note that the Appellant has submitted a planning obligation contained within a Section 106 Agreement that would make provision for a financial contribution towards impact avoidance and mitigation measures. Furthermore, the Council and Appellant have agreed a suggested condition, were the appeal to be allowed, setting out on-site measures to avoid impacts from the proposed development on those SPAs, Ramsar Sites and SAC.
64. Nevertheless, it would ordinarily be necessary to undertake an Appropriate Assessment (AA) under the Habitats Regulations in relation to the effect of the proposed development on those features. I have not needed to undertake such an AA in this case as I am dismissing the appeal for other reasons. Furthermore, such a contribution and on-site measures would be for mitigation purposes and so would not represent a benefit of the proposed development to be weighed in the planning balance.

### **Conclusion**

65. I have not found there to be any conflict with the Council's development plan. Nevertheless, the Framework represents a material consideration which in this case, for the reasons given above, causes me to conclude that the appeal should be dismissed.

*A Dawe*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Rupert Warren KC, Landmark Chambers                      Instructed by CODE Development Planners

He called:

Andrew Smith BSc (Hons), MSc, CMLI                      fabrik Limited

James Donagh BA (Hons), MCD, MIED                      Director, Stantec

Liam Ryder MPlan, MRTPI                      Associate Director, CODE Development Planners

### FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga of Counsel, Cornerstone Barristers                      Instructed by David Bland, Legal Services at Castle Point Borough Council

He called:

Phillip Hughes BA (Hons), MRTPI, FRGS, Dip Man, MCMI                      Director, PHD Chartered Town Planners Limited

Stephen Garner MRTPI (for round table discussion on conditions and planning obligations)                      Assistant Director for Development Services at Castle Point Borough Council

Mark Lawrence (for round table discussion on conditions and planning obligations)                      Strategic Development Engineer for South Essex, Essex County Council

Maria Hennessy (for round table discussion on conditions and planning obligations)                      Senior Planning Policy Officer at Castle Point Borough Council

### INTERESTED PARTIES:

Councillor Tim Copsey                      Councillor for Ward of St. Michaels

Rebecca Harris                      Local resident

Councillor Rob Lillis                      Councillor and Cabinet Member for Health, Wellbeing and Housing

**INQUIRY DOCUMENTS:**

1. Opening Statement on behalf of the Appellant.
2. Opening Statement on behalf the Council.
3. Statement made by Councillor Tim Copsey
4. Statement made by Rebecca Harris
5. Statement made by Councillor Rob Lillis
6. Suggested route for Inspector's site visit
7. CODE review of suggested conditions from statutory consultees, 3 June 2024
8. Draft version of Section 106 Agreement
9. Agreed schedule of suggested planning conditions between Appellant and Council, 7 June 2024
10. Proposed parameter plan – building scale, dwg no. 302 Revision K
11. Unsigned, updated and agreed version of Section 106 Agreement
12. Closing submissions of the Council
13. Closing submissions of the Appellant