

Pre-Hearing Note

APPEAL REF: APP/M1520/W/22/3310483

**Site address: Land Rear of 248 Hart Road, Thundersley, Benfleet SS7
3UQ**

Appellant: Legal & General Affordable Homes

Local Planning Authority: Castle Point Borough Council

Background

1. A one-day hearing relating to the above appeal will take place at Committee Room 1, Castle Point Borough Council Offices, Kiln Road, Thundersley, Benfleet, Essex SS7 1TF, on 29 March 2023. It will be conducted by Paul Thompson DipTRP MAUD MRTPI, who is the Inspector appointed by the Secretary of State to determine the appeal.
2. The purpose of this pre-hearing note is to explain how the event will operate in a fair, open, and transparent way and what should be done to ensure it runs smoothly.

Format

3. The Inspector will start the event in the usual way by running through several preliminary matters. A preliminary agenda is at the end of this note, but it could well change. The Inspector will issue a final version shortly before the event.
4. The hearing will be run as a structured discussion with the Inspector asking a series of questions in respect of the main issues. All parties who so wish, will be given an opportunity to speak. There is no need to simply repeat representations that have already been made in writing. The Inspector will take into consideration all written submissions that have been previously made by any party.
5. The Hearing will commence at 10.00am on 29 March 2023 and the Inspector will ensure there are opportunities for breaks, which will probably take place between discussions on the main issues and are likely to be every couple of hours or so.

Statement of Common Ground

6. A Draft Statement of Common Ground (SoCG) has been received from the appellants. The Inspector is disappointed that the main parties have not yet been able to use the time allotted to complete the SoCG so please do so by

no later than **Midday on 21 March 2023** to enable the Inspector to have sufficient time to consider it, well in advance of the Hearing.

Habitat Regulations Assessment

7. The Inspector will need to reach his own conclusions on the basis of the evidence before him regarding the potential effect on European Sites.
8. The Essex Coast RAMS Supplementary Planning Document May 2020 (SPD) refers to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) but the Inspector does not have a copy of this document, please provide this as soon as practicably possible. If RAMS does not include the qualifying features for which each of the European Sites were designated, then these should also be provided.
9. In this regard, the Inspector notes that the SPD includes the Zones of Influence (ZOI) for the for the European Sites contained within Essex Estuaries and it appears that the appeal site is situated within the ZOI for the Blackwater Estuary SPA and Ramsar sites and the Benfleet and Southend Marshes SPA and Ramsar sites. It does not appear to be within the ZOI for the Outer Thames SPA as indicated in the Council's Officer Report (OR). If this is not the case then the correct sites should be identified and above information provided regarding them.
10. The SoCG should therefore include an agreed position regarding the European Sites, including whether the conclusions in respect of the Habitats Regulations Assessment included in the OR still stand for the correctly identified sites. The main parties should also provide relevant commentary on the subsections referring to the different impacts of the proposal, including whether the measures proposed in RAMS and through other means identified therein are sufficient to avoid or reduce impacts in order to maintain the integrity of the European Sites and qualifying features.
11. In order to save time following the Hearing, the Inspector will instruct that Natural England is consulted regarding the effect of the proposal on the European Sites and the mitigation measures proposed. The information received will be used in this consultation, which you will receive a copy of.
12. If it would not be possible to agree these matters by the date set out above for the SoCG then they should be set out in a separately agreed document to be received by no later than Midday on 27 March 2023.
13. The legal agreement should include the RAMS payment and measures to ensure it is spent in a timely fashion to address impacts of the proposal.

Planning Conditions

14. The planning conditions included as an appendix to the Council's Statement reflect the conditions in its Officer Report. The main parties should ensure that the SoCG includes all the relevant conditions referred to by all the Council's consultees and they all refer to the correct documents and drawings. Please ensure that these are all provided to us. Nonetheless, the Inspector has the following comments in relation to those conditions:

Condition 3: The Council should consider how it would expect to be able to evidence that damage or defects caused to the highway has been caused by construction traffic associated with the proposal; and how this would meet the tests outlined in paragraph 56 of the Framework?

Condition 5: How would the details required by the conditions relate to the proposed layout and other documents submitted? Moreover, would the requirements of the condition be likely to result in alteration of the scheme? In addition, could the content of Conditions 10 and 23 be included within this condition, to ensure it is clear that responsibilities are outlined? Nevertheless, Condition 10 would need a further clause to ensure maintenance is undertaken as agreed.

Condition 6: Are the details included in this condition already dealt with in the CEMP (Reference: 21255-002 dated December 2021) and thereby controlled by Condition 14 or the Flood Risk Assessment?

Condition 9: Should the details included in the condition be agreed to avoid abortive work and potential issues with the construction phase?

Condition 11: The agreed details should be controlled by a further clause in the condition. However, the Inspector would be interested to know whether the appellants' Net Zero Carbon Strategy and the amended drawings address any of these points?

Condition 12: The condition should be reworded to relate to details being submitted after below ground construction and a further element to control the development being constructed in accordance with the agreed details.

Condition 14: Is this required regarding Condition 6 above.

Condition 15: There may be some benefit to the wording of the condition being reworded to be more specific to signpost matters more specifically.

Condition 16: The main parties should confirm whether the visibility splays would be on highway land or land within the appellant's control.

Conditions 18 and 19 use different language – referring to amenity areas and open space – do these refer to the same thing? The Conditions should include

details of how they are to be permanently maintained or link to other conditions that deal with this.

Conditions 19 and 31 appear to be similar, please check these to avoid duplication.

Condition 20: The condition should be more specific in respect of the nature of such accesses and the location of the splays, i.e. does this relate to driveways? How would this be enforced?

Condition 21: Details of the approved spaces need to be referenced.

Condition 22: Is a further clause necessary to ensure the details are maintained as such?

Condition 24: Does the visitor parking need to be provided before all dwellings are occupied or can this be provided where required (stipulation of specified plots may be more precise)?

Condition 25: This condition is not necessary as it is now covered by the Building Regulations.

Conditions 28, 29 and 30: Details of the location, number of, and what constitutes an appropriate gate may be necessary, unless this is referred to in any supporting documents, is this mentioned anywhere?

Condition 32: The condition could be unnecessarily restrictive, it should include reference to those plots where this is likely to be an issue, as some windows may be acceptable.

Condition 33: The condition should be more precise as to what it is related to, e.g. roofs, hard surfaces etc.

Condition 34: The condition needs to be more precise, as it may not be achievable with windows open in summer etc.

Condition 36: These details ought to be agreed to ensure they are robust. It may be prudent to include this in the legal agreement.

Legal Agreement

15. The Inspector notes that the main parties are negotiating and progressing a Section 106 agreement. In order to ensure that all matters relevant to the agreement can be discussed, if needed, at the Hearing, the finalised agreement should be provided to the Inspector **Midday on 21 March 2023**.
16. The main parties should also be prepared to answer questions at the Hearing as to the implications of the Council's proposed CIL Charging Schedule for the agreement.

Late Evidence

17. It is not anticipated that there will be any need for additional documents to be handed up during the hearing. You should review your cases promptly to ensure that is the case.
18. However, the Inspector has requested copies of site layout and location plans for the appeals referred to by the main parties, please provide these as soon as possible but no later than **Midday on 21 March 2023**.

Site Visit

19. Depending on progress during the event, the Inspector intends to undertake a site visit on Wednesday 29 March 2023, on an unaccompanied basis without other parties. However, access to the site will need to be provided. At the Hearing, parties will have the opportunity to make submissions on particular aspects of the site and surrounds they may wish the Inspector to observe.

Provisional Draft Agenda

1. Introduction, opening formalities and points of clarification.
2. Planning policy matters.
3. Main issues:
 - i) whether the development would be inappropriate development in the Green Belt;
 - ii) the effect of the proposal on the openness of the Green Belt;
 - iii) discussion regarding the very special circumstances required to justify the proposal, including affordable housing.
4. Other Matters (including Habitats Regulations Assessment)
5. Planning Conditions (without prejudice).
6. Planning Obligations.
7. Applications for costs (if any).
9. Arrangements for the site visit and closing.